Before the
Federal Communications Commission
Washington, D.C. 20554

2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
Definition of Radio Markets	)	MM Docket No. 00-244

To: The Commission

COMMENTS OF COALITION BROADCASTERS
LIN TELEVISION CORPORATION, RAYCOM MEDIA, INC.,
WATERMAN BROADCASTING CORPORATION,
AND MONTCLAIR COMMUNICATIONS, INC.

January 2, 2003

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SUMMARY

Experience has now demonstrated beyond any doubt that the local television ownership rule impedes realization of the very public interest benefits it was designed to protect. Its "8-voice-top-4" test predictably has withheld the benefits of common ownership to viewers, particularly of stations in mid-sized and smaller markets. The "failing station" standard -- three years of negative cash flow, 4% share or below *and* a special public interest showing -- blinks economic realities. And, similarly, real-world conditions, including the awesome and continuing burdens of the digital transition (disproportionately heavy for smaller stations), vanishing or even negative network compensation and the power of other media outlets, call for prompt and drastic reform of the rule.

LIN Television, Raycom Media, Waterman Broadcasting and Montclair Communications (collectively, the "Coalition Broadcasters") own or operate some 70 television broadcast stations located primarily in small- and mid-sized markets throughout the United States and Puerto Rico. The Coalition Broadcasters are acutely aware of the difficulties that smaller stations face. Each of the Coalition Broadcasters has found that participation in a duopoly or LMA improves station service to its community and strengthens its resources, thereby contributing positively to diversity and other public interest goals. Through joint operation, stations can upgrade equipment, offer better and expanded local news service, and provide different, higher-quality programming that is responsive to the needs of diverse, previously underserved groups of viewers in the market. While LMAs help provide these benefits, current FCC rules generally preclude those arrangements in most markets if they involve more than 15% of a station's program schedule. Thus, LMAs fail to maximize the efficiencies that common ownership would provide and do not promote the long-term investment

and commitment made possible by joint ownership. That, plus the rapidly changing and stiffly challenging market circumstances described above, is why the Commission should expeditiously overhaul the well-meaning but counterproductive local television ownership rule.

The Coalition Broadcasters here submit the BIA Financial Network Study that demonstrates the greater revenue-generation and audience-share record of duopoly/LMA stations compared to similarly-situated stations not supported by duopoly or LMA arrangements. They further submit the comparative records of the two groups of stations in connection with DTV build-out as a clear and telling proxy for innovation and public service. Finally, by way of compelling empirical data, they describe, case-by-case, the benefits provided by each of their duopolies and LMAs. It is a stunning record. It shows that the Commission was right to liberalize the television ownership rule four years ago, but that it stopped far short of the proper mark. Armed with this information, the Commission should push forward to extend these benefits, particularly in smaller and mid-sized markets, and to bring the rule into line with market realities.

The Commission should take this overdue step by considering one of two models for reform. The Commission could presume that an in-market duopoly serves the public interest so long as it does not result in a monopoly. Or, the Commission could presume that an in-market duopoly is in the public interest if it would enable a weaker station (up to 10 to 15% audience share) to combine with a stronger station or with another weaker station. The Commission should also overhaul the "failing station" exception so that it provides relief from the rule when stations are, as a factual matter, in financial distress, not when unrealistically high and arbitrary benchmarks are met. And, in addition, it should provide for waivers based on other circumstances where the resulting common ownership will improve service to the public. By taking these steps, the Commission will strike a powerful blow for strengthened, more sustained, and innovative and community-responsive television service.

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The recent failure in court of the Commission's existing approach to regulating local television station ownership underlines its failure, in practice, to provide a fair and workable standard.[1] The local TV ownership rule too often illogically blocks combinations, especially in small- and medium-sized markets, without regard to their potential to enhance a station's viability, public service capacity or ability to innovate on behalf of viewers. The rule ignores the fact that many combinations may preserve, and even increase, competition and the

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[1] *Sinclair Broadcast Group, Inc., v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) (holding that the FCC failed to provide a valid explanation for not considering nonbroadcast media outlets in TV duopoly context), *reh'g denied*, No. 01-1079 2002 U.S. App. LEXIS 16618 (D.C. Cir. 2002), *reh'g en banc denied*, No. 01-1079, 2002 U.S. App. LEXIS 16619 (D.C. Cir. 2002).

diversity of viewpoints in local markets. The companion "failing station" waiver standard has proven to be overly rigid and counterproductive as well. By significantly lowering unnecessarily high regulatory barriers to same-market TV combinations, the Commission will help to ensure the competitiveness of weaker television stations, speed the transition to digital, foster localism and viewpoint diversity and more generally advance the public interest.

The Coalition Broadcasters, which own or provide programming, advertising and other services to some 70 television stations located in 25 states and Puerto Rico, share this view.

- **Waterman Broadcasting, Corp.** owns WBBH-TV (NBC), Fort Myers, FL and provides programming, advertising and other services to WZVN-TV(ABC), Naples, FL, in the Fort Myers-Naples, FL Nielsen Designated Market Area ("DMA") (#70) pursuant to a grandfathered local marketing agreement ("LMA") with licensee **Montclair Communications, Inc.** (Montclair, which is not part of Waterman, joins these comments as an independent licensee.)[2] Waterman also owns and operates WVIR-TV (NBC) in the Charlottesville, VA DMA (#186).
- **Raycom Media, Inc.** ("Raycom") owns 29 full-power stations, including the WOIO (CBS)/WUAB (UPN) duopoly in the Cleveland, OH DMA (#17) and KHNL (NBC)/KFVE (WB) duopoly in the Honolulu, HI DMA (#72), and another five stations that operate as satellites in various markets.[3]

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2 Waterman and Montclair have sought consent for the two stations to be co-owned. *See* n.18, below.

3 The Raycom owned and operated stations include: KASA-TV, Ch. 2, Santa Fe, New Mexico; KFVE, Ch. 5, Honolulu, Hawaii; KFVS-TV, Ch. 12, Cape Girardeau, Missouri; KHNL, Ch. 13, Honolulu, and its satellites KHBC, Ch. 2, Hilo, and KOGG, Ch. 15, Wailuku, all Hawaii; KOLD-TV, Ch. 13, Tucson, Arizona; KSFY-TV, Ch. 13, Sioux Falls, and its satellites KABY-TV, Ch. 9, Aberdeen, and (footnote cont'd)

- **LIN Television Corporation** ("LIN") owns 26 full-power stations, including the WTNH-TV (ABC)/WCTX (UPN) duopoly in the Hartford-New Haven, CT DMA (#28), the WOOD-TV (NBC)/WOTV (ABC) duopoly in Grand Rapids-Kalamazoo-Battle Creek, MI DMA (#38), the WAVY-TV (NBC)/WVBT (Fox) duopoly in the Norfolk-Portsmouth-Newport News, VA DMA (#41); the WIVB-TV (CBS)/WNLO (WB) duopoly in the Buffalo, NY DMA (#47), and the WAPA-TV (I)/WJPX (PAX) duopoly in Puerto Rico. Pursuant to LMA, LIN's station WPRI-TV (CBS) provides programming, advertising and other services to WNAC-TV (Fox) in the Providence, RI-New Bedford, MA DMA (#49); LIN's KXAN-TV (NBC) provides programming, advertising and other services to KNVA (WB) in the Austin, TX DMA (#54). LIN operates another four stations as satellites.[4]

(footnote cont'd)
KPRY-TV, Ch. 4, Pierre, all South Dakota; KSLA-TV, Ch. 12, Shreveport, Louisiana; KTVO, Ch. 3, Kirksville, Missouri; KWWL, Ch. 7, Waterloo, Iowa; KXRM-TV, Ch. 21, Colorado Springs, Colorado; WACH, Ch. 57, Columbia, South Carolina; WAFB, Ch. 9, Baton Rouge, Louisiana; WAFF, Ch. 48, Huntsville, Alabama; WDAM-TV, Ch. 7, Laurel, Mississippi; WECT, Ch. 6, Wilmington, North Carolina; WFLX, Ch. 29, West Palm Beach, Florida; WLII, Ch. 11, San Juan, and its satellite WSUR-TV, Ch. 9, San Juan, all Puerto Rico; WLUC-TV, Ch. 6, Marquette, Michigan; WMC-TV, Ch. 5, Memphis, Tennessee; WNWO-TV, Ch. 24, Toledo, Ohio; WOIO, Ch. 19, Shaker Heights, Ohio; WPBN-TV, Ch. 7, Traverse City, Michigan; WSTM-TV, Ch. 3, Syracuse, New York; WTNZ, Ch. 43, Knoxville, Tennessee; WTOC-TV, Ch. 11, Savannah, Georgia; WTVM, Ch. 9, Columbus, Georgia; WTVR-TV, Ch. 6, Richmond, Virginia; WUAB, Ch. 43, Lorain, Ohio; and WXIX-TV, Ch. 19, Newport, Kentucky. Raycom provides programming and other services under grandfathered agreements to WSTE, Ch. 7, Ponce, and WORA-TV, Ch. 5, Mayaguez, both Puerto Rico.

[4] The LIN owned and operated stations include: WISH-TV, Ch. 8, Indianapolis, Indiana; WTNH-TV, Ch. 8, New Haven, Connecticut; WCTX, Ch. 59, New Haven, Connecticut; WOOD-TV, Ch. 8, Grand Rapids, Michigan; WOTV, Ch. 41, Battle Creek, Michigan; WAVY-TV, Ch. 10, Portsmouth, Virginia; WVBT, Ch. 43, Virginia Beach, Virginia; WIVB-TV, Ch. 4, Buffalo, New York; WNLO, Ch. 23, Buffalo, New York; WPRI-TV, Ch. 12, Providence, Rhode Island; KXAN-TV, Ch. 36, Austin, and its satellite KXAM-TV, Ch. 14, Llano, both Texas; WDTN, Ch. 2, Dayton, Ohio; WEYI-TV, Ch. 25, Saginaw, Michigan; WUPW, Ch. 36, Toledo, Ohio; WANE-TV, Ch. 15, Fort Wayne, Indiana; WWLP, Ch. 22, Springfield, Massachusetts; KRBC-TV, Ch. 9, Abilene, Texas; WLFI-TV, Ch. 8, Lafayette,
(footnote cont'd)

I. THE LOCAL TV OWNERSHIP RULE SHOULD BE RELAXED AND BROUGHT INTO LINE WITH REAL-WORLD CONDITIONS.

The "8-voice-top-4"[5] local TV ownership standard is too rigid and must be relaxed. This overly high bar makes the rule insensitive to the public interest concerns that should underlie broadcast ownership policies. It is particularly insensitive to market realities in small- and medium-sized markets, many of which would benefit greatly from the stability and enhanced local service made possible by common ownership. Broadcasters increasingly are finding small and medium market television operations financially challenging and risky. Many of the Coalition Broadcasters' competitors, including cable MSOs and satellite providers, are vertically integrated media giants capable of leveraging powerful economies of scale and calling on multiple revenue streams. In-market TV combinations can represent a productive means of increasing the efficiency of local stations, enhancing competition, and stabilizing and improving service to local communities.

The current rule is particularly out of step with the urgent economic need for greater common ownership of TV stations in medium and small markets. No reasonable person would assume that the public interest requires the same minimum number of gasoline stations in Fredericksburg, Virginia, as it does in Washington, D.C. Yet this is the kind of assumption that

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(footnote cont'd)
Indiana; KACB-TV, Ch. 3, San Angelo, Texas; WAPA-TV, Ch. 4, San Juan, and its satellite WNJX-TV, Ch. 22, Mayaguez, all Puerto Rico, and WJPX, Ch. 24, San Juan, and its satellites WJWN, Ch. 38, San Sebastian, and WKPV, Ch. 20, Ponce, all Puerto Rico. LIN provides programming and other services under grandfathered LMAs to KNVA, Ch. 54, Austin, Texas; WNAC-TV, Ch. 64, Providence, Rhode Island; and WTIN, Ch. 14, Ponce, Puerto Rico. In addition, LIN operates WAND(TV) in Decatur, Illinois, under a management services agreement and WXSP, a network of LPTV stations in the Grand Rapids, Michigan market which is affiliated with the UPN network.

[5] This refers to the two prongs of the local TV ownership rule that generally bars same-DMA combinations unless (i) at least one of the stations is not among the market's top four ranked broadcast TV stations, and (ii) at least eight independently owned and operating full-power commercial and noncommercial TV stations will remain in the DMA post-merger. *See* 47 C.F.R. § 73.3555(b).

the present duopoly rule makes about independently-owned television stations.[6] The unreasonableness of the regulatory barriers created for broadcasters is well illustrated by experience in markets such as Austin, TX (the 54th ranked DMA) and Fort Myers-Naples, FL (the 70th ranked DMA) where LIN and Waterman, respectively, own stronger stations that provide services to weaker stations through grandfathered LMAs. In each case, the current economic and competitive climate calls for and fully supports common ownership.[7] Unfortunately, television "voice" counts in these markets fall just short of meeting the overprotective "8-voice" standard. Absent grant of a waiver, the current rule mistakenly assumes that duopolies in markets such as Austin and Fort Myers-Naples will damage the public interest when, in fact, the opposite is true. As detailed herein, duopolies in these markets would help the affected stations enhance and sustain the benefits already being achieved through LMAs.[8]

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6 The test is also arbitrary because the number of voices usually is a function of the television allotment table, which provides fewer opportunities for voices in small- and medium-sized markets, and in congested regions of the country.

7 For example, the penetration rates for cable and alternative delivery systems in Austin is 79.3% and Fort Myers is 90.4%. In addition, newspapers in the Fort Myers market collect nearly three times the revenue of WBBH-TV, WINK-TV, WFTX-TV, WTVK-TV and WZVN-TV combined. These facts are not taken into account under the Commission's local TV rule.

8 LMAs are by their very nature temporary and limited, which creates on-going inefficiencies and uncertainties and therefore discourages longer-term investment. For example, investment in brokered stations is discouraged because brokering stations are unable to capture the enhanced equity generated in the station. Though brokering stations do not realize the enhanced value of the brokered station, such LMAs are attributable if more than 15% of programming is provided. Moreover, brokering licensees must retain control over their personnel, programming and finances. As a result, brokered stations incur expenses associated with hiring managerial and operations personnel to comply with the main studio rule, maintaining a studio facility, and otherwise overseeing its operations. Additionally, brokering stations often face inefficiencies in obtaining the approval of the brokered station in carrying out their rights and obligations pursuant to the LMA. And, unfortunately, the local TV ownership rule currently bars new LMAs (involving more than 15% of programming) between same-market stations unless the stations could be co-owned. Common ownership would provide greater long-term stability and permit expansion of the benefits made possible by joint operation.

The need to remove excessive obstacles to beneficial TV combinations in medium and small markets is critical and is rapidly escalating. The waning of network compensation[9] combined with the expense of converting to digital[10] is drastically undercutting the financial health and even survival of many stations. Today, as local TV stations also face greater competition from cable networks, DBS and the Internet, the Commission should promptly adapt its local TV ownership rules to encourage stations to invest in innovation, navigate the digital transition and serve the public.

A. DUOPOLIES AND LMAS INCREASE COMPETITION AND DIVERSITY BY STRENGTHENING STRUGGLING STATIONS' MARKET SHARE AND REVENUE.

In-market TV combinations result in benefits to the public interest because they help ensure the viability of local over-the-air broadcasters that might otherwise go dark or offer only low-cost, low-quality services and help enable stations make an effective DTV transition. Even the limited consolidation achieved through existing LMAs and duopolies has enabled in-

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[9] Fox generally pays no compensation to affiliates and in some cases insists on "reverse compensation," *i.e.,* the station pays the network. NBC and CBS are generally phasing out network compensation over the next several years. ABC is moving in the same direction, albeit thus far more slowly. In addition, affiliates of ABC, CBS and Fox make contributions to the network for NFL football, and affiliates of certain networks make contributions for network news feeds – both of which are forms of reverse compensation. In smaller markets, network compensation in the past has contributed up to 20% or more of station revenues and has often made the difference between profitability and lack of financial viability.

Moreover, it is a misnomer that network programming is made available to affiliates for free. During periods of network programming, affiliates contribute "for free" most of their advertising availabilities to the network for it to sell to the network's advertisers. Thus, affiliates pay their networks in advertising time and, in many instances, cash for the right to broadcast network programs.

[10] The initial costs for inaugurating so-called "pass-through" digital service may average about $2 million per station. But the burden of fully transitioning to digital is much higher because: (i) the costs for subsequent stages to convert to digital completely may be another $6 million per station; (ii) these costs are not appreciably less for smaller market stations, where they devour a substantial share of station revenues and can eliminate profitability; (iii) lending costs for these expenditures can be high; (iv) these figures do not include the higher operating costs of broadcasting in digital; and (v) at present there is virtually no additional revenue generated by DTV.

market stations to offer beneficial services such as local news and public affairs programming and other innovative services. It has ensured that smaller stations survive by making them more competitive, allowing them to expand the services they offer and in many cases to preserve or even enhance diversity of programming.

A study conducted by BIA Financial Network evaluates the record of seven of LIN's and Raycom's stations that have entered into LMAs or duopolies to determine whether these arrangements have strengthened these stations in their local communities and enhanced the overall competitiveness of the local television market (the "BIA Study").[11] The BIA Study analyzes the audience share and total revenue of these stations prior to and after joint operation was initiated. In every case, the advent of the relationship led to significant increases in both audience share and advertising revenue. These stations increased their audience share on average by 3.2 points after entering into an LMA or joint ownership from the average for the two years prior to that change. Revenue increased on average by 250.7% from the year immediately before the LMA or common ownership to 2001. The increase in revenue of these stations directly correlates with the increase in audience share, which is evidence of greater public acceptance and demonstrates that these stations are providing better service to the public.

The BIA Study also compared the results of the seven LMA or commonly-owned stations to the performance of other similarly situated stations with the same affiliation in the five markets above and below the stations in question. The LIN and Raycom stations out-

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[11] *See Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?*, Mark Fratrik, Vice President, BIA Financial Network (Jan. 2, 2003), submitted herewith as Attachment A. The BIA Study includes graphs plotting the yearly audience share and revenue for the stations, as well as graphs comparing the performance of LIN's and Raycom's stations with other similarly situated stations. An analysis of Waterman's LMA in Fort Myers-Naples, Florida was not included in the study because there are an insufficient number of similarly situated stations to make a meaningful comparison. *See* Attachment A at n. 1.

performed these similarly situated stations.[12] The BIA Study concludes that by operating jointly with other local television stations, these stations have "unambiguously" strengthened their appeal to their local communities and improved their financial positions, which clearly has increased diversity and competition in these local television markets. The deeper and more lasting efficiencies and stability afforded by joint ownership would enable the public to enjoy these benefits on a wider scale and put them on a secure long-term footing.[13]

B. IMPACT OF DUOPOLIES AND LMAS ON INNOVATION AND DTV BUILDOUT.

Broadcast stations in small- and mid-sized markets in many instances need the economic efficiencies that come with joint ownership to make a real commitment to innovative technologies and services. As detailed below, these efficiencies have already driven innovation in many of the stations owned and operated by the Coalition Broadcasters. Since entering into duopolies, many of these stations have vastly improved their news gathering capabilities, including investing in satellite news vans, Doppler Weather Radar and other advanced systems that the stations would not have acquired without the advantages of local joint operation.

Further, the efficiencies of joint operation in small- and mid-sized markets are necessary to provide HDTV services and to make the necessary investment in developing ancillary and supplementary services, multicasting, and other emerging digital broadcast technologies including interactive services. The DTV experience demonstrates that joint operation facilitates innovation. In these markets, smaller stations operating under LMA or

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[12] It is important to note that the performance of these stations is understated because some of the comparison stations also are operating pursuant to LMA and duopoly arrangements. *See* Attachment A at 8.

[13] *Id.*

duopoly arrangements have begun broadcasting in digital earlier than similar stations without such an arrangement.

The Coalition Broadcasters analyzed markets 51 to 100 to determine whether smaller stations (represented for purposes of this study by UPN and WB affiliates) operating under LMA or duopoly arrangements have gone on-air with digital earlier than stations without an LMA or duopoly arrangement. The results confirm that, on the whole, UPN and WB affiliates operating under duopolies or LMAs are outpacing stand-alone UPN and WB affiliates in transitioning to digital.[14] In particular:

- Only 30% of UPN/WB stations in non-duopoly, non-LMA situations are broadcasting in digital, compared with 55.6% of UPN/WB stations that are subject to LMAs or duopolies.
- Of the 40 stations in non-duopoly, non-LMA situations, seven have not even begun to transition to digital (*i.e.*, they have not filed an initial application or have had their applications dismissed), while every station in an LMA or duopoly that has been allotted a DTV channel has begun the transition.
- 7.5% of non-duopoly, non-LMA stations still have initial DTV applications pending, while none of the stations in LMAs or duopolies has pending a DTV application.
- 37.5% of non-duopoly, non-LMA stations have construction permit extension requests pending or have had a construction permit extension request granted, compared with 44.4% of stations in LMAs or duopolies.

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14 The full results of the study are appended to these comments as Attachment B.

The Commission will undercut the policy commitment to innovation, local broadcasting and the digital transition if it fails to remove unnecessarily high barriers of the existing local TV ownership rule.

II. RECOMMENDATIONS FOR REVISING THE LOCAL TV OWNERSHIP RULE.

A revised local TV ownership rule should take into account the ability of TV duopolies to create public interest benefits. It also must not falsely assume that duopolies especially in small- and mid-sized markets threaten diversity. The new rule should also be straightforward and easy to apply. At the same time, special circumstances and borderline cases are inevitable and should be anticipated in principle and accommodated in particular.

A. Basic Rule.

The new local TV ownership rule should provide the public, broadcasters, lenders and investors with greater confidence that, under most circumstances, the Commission will not intervene to block private transactions that would result in co-ownership of two television stations in a single market. The Coalition Broadcasters can envision multiple ways of defining those circumstances. Whatever form the basic rule takes, however, the Commission should provide substantially broader opportunities for TV duopolies than exist under the current rule and ensure that the revised rule does not preclude the public, particularly in medium and small markets, from receiving the benefits of common ownership.

While cross-media competition and diversity affect how the rule should be reformed, for the sake of simplicity the basic rule should not require analyses of media other than broadcast television. Other media may be relevant in borderline cases, but the Coalition Broadcasters believe that a revised television-specific benchmark would be simple to apply and wholly adequate under most conditions. We support either of two basic models, subject to analyzing alternatives that may be advanced by other commenters in this proceeding:

1. No Local Monopoly Rule.

The Commission could presume that co-ownership of two television stations in a single DMA serves the public interest so long as it does not create a local monopoly (*i.e.*, one or more additional broadcast television stations in the market would remain independently owned). This presumptive rule would aid smaller markets in particular by permitting duopolies in all markets except those where the duopoly would completely eliminate diversity of ownership. Of course, antitrust law would still apply to certain combinations that pose a particular threat to competition.

2. Weaker Station Rule.

Alternatively, the Commission could presume that co-ownership of two television stations in the same DMA serves the public interest if the transaction would enable a weaker station to combine with a stronger station, or with another weaker station, to enhance competition and service to the public. The Coalition Broadcasters support the proposal by the National Association of Broadcasters ("NAB") for a rule that permits any duopoly in which the smaller station has less than a 10% share of all viewing, 7 a.m. to 1 a.m., for a four-book average of all viewing in the market, including viewing of out-of-market broadcast stations and cable/satellite channels. The particular strength of NAB's proposed approach is that it would protect a well-defined level of diversity but nonetheless is predictable, simple and easy to apply. To provide more realistic flexibility in smaller markets, the Coalition Broadcasters urge a somewhat higher threshold (*e.g.*, 12 to 15%) and strongly oppose any threshold lower than NAB's less than 10% benchmark.[15] Alternatively and taking into account the realities of smaller

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[15] We support NAB's view that the FCC should freely permit combinations formed under a revised rule to be assigned or transferred and should grandfather existing combinations (duopolies/LMAs).

markets, the Commission might adopt the higher 12 or 15% standard for markets below a certain rank (markets below the top-50) or a certain number of TV households.

B. Rebuttal Or Waiver Factors

We encourage the Commission to adopt a rule that provides a high degree of reliability that proposed duopolies can survive regulatory scrutiny. Markets need this certainty to achieve rational and efficient common ownership. Nonetheless, we recognize that occasional exceptions are inevitable because the underlying rule is merely presumptive, or because, like all rules, it is subject to a waiver analysis. We urge the Commission to provide for such exceptions by articulating an appropriate set of rebuttal or waiver showings to be developed through case law. This process could be undertaken as the Commission and the industry develop experience under the new rule. With the exception of the failing station standard (which should be revised in this rulemaking), this step does not have to be taken at the same time as promulgation of the new rule.

Waiver or rebuttal showings should not be governed by standards that repeat the mistakes that prevented the existing "failing station" waiver standard from achieving its goal of "provid[ing] relief in a more tailored fashion for stations in smaller markets that are unable to compete effectively."[16] In defining the "failing station" exception, the Commission set unrealistic benchmarks -- no more than 4% all day audience share and negative cash flow for three years -- that have proven overly rigid in practice, especially in smaller markets. The Commission's emphasis on negative cash flow as a measure of financial failure was misplaced. Recent corporate crises in other industries have shown that other factors (*e.g.*, excessive debt and

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16 *See Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules,* 14 F.C.C. Rcd 12,903, 12,935.

interest obligations) can easily cause a business to fail in spite of positive cash flow.[17] The 4% viewership benchmark is particularly unsuitable in smaller markets because with fewer viewers overall and a smaller number of stations competing for those viewers, the reality is that a 4% or better audience share does not reflect financial viability.[18] Moreover, the "failing station" exception is blind to market realities in requiring both tests to be met, plus a public interest showing. Thus, a station with negative cash flow for three years and that is on the brink of going dark due to bankruptcy concerns would not qualify for a "failing station" waiver if its audience share exceeded 4%. The 4% test should be deleted altogether.

The Commission should also recognize that in special circumstances, it can and should give independent weight to public interest considerations that support allowing a duopoly, wholly apart from financial failure. While public interest considerations currently form a part of the failing station analysis, they are an additional factor, not an independent one. The result, perversely, has been that even the most remarkable public interest benefits are not, by themselves, enough to justify any duopoly involving a station that manages to break even or make a small profit.[19] This approach is too narrow.

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17 *See* Andrew Ross Sorkin and Alex Berenson, *Tyco Admits Using Accounting Tricks To Inflate Earnings*, N.Y. Times, Dec. 31, 2002, at A1 & C2 (with respect to Tyco International).

18 In a large market, such as a top 10 market, 4% may represent hundreds of thousands of viewers -- more than enough to allow a small station serving a niche audience to generate the levels of viewership and advertising revenue it needs to survive. In a small market, by contrast, 4% may be only a few hundred viewers, which is not sufficient for the station to continue to provide service. The 10% metric in NAB's proposal is a fairer benchmark; a station above 10% all day audience share is somewhat more likely to succeed even in a medium or small market than a station below 10%, although this is not always the case.

19 For example, owners of a station that is achieving a small profit with little or no local programming may lack incentives or even resources to invest in additional local programming (as opposed, for example, to buying lower-cost syndicated programming). If an in-market station owner could buy the station, the economies of scale of co-ownership could enable the first station to introduce new local news and public affairs programs. Yet the existing "failing station" standard would work to (footnote cont'd)

In cases where application of the new local TV ownership standard leads to the presumption or conclusion that a duopoly is not permissible, the revised rules should permit the applicant to show that the proposed transaction would make an affirmative contribution to the public interest that outweighs any threat to diversity, competition or localism. Rescuing a station from financial difficulty would be only one of several possible showings. We propose that the applicant's burden could be met by making a public interest showing based on one or more of the following factors:

- Penetration levels of local cable channels, DBS systems, the Internet, newspapers and other media outlets, that are especially significant in a specific local market, provide adequate viewpoint diversity, competition and local content;
- Local markets for advertising, program production and program delivery will remain competitive;
- The combination will promote innovation by enabling the stations to offer new technologies and services to the public; and
- The assignee/transferee voluntarily undertakes an obligation to preserve the viewpoint diversity of the acquired in-market station (*e.g.,* by maintaining distinct local programming).

(footnote cont'd)
prevent the Commission from even considering whether the obvious benefits to localism of common ownership in these circumstances outweighed any threat the transaction might pose to local competition.

III. EMPIRICAL EVIDENCE DEMONSTRATES THAT TV DUOPOLIES AND LMAS BENEFIT THE PUBLIC.

A. Impact Of Duopolies/LMAs On Station Viability And Service.

The following sections describe specific, real-world experiences demonstrating that same-market TV combinations should be presumed to enhance the viability and service of broadcast television stations.

1. Waterman & Montclair.

The LMA between Waterman and Montclair in the Fort Myers-Naples, FL DMA, illustrates how the efficiencies of joint operation and the support of a committed station owner in the same market can turn a struggling, even failing, station into a healthy competitor with a distinctive local voice, providing important service to the public. Waterman is the licensee of WBBH-TV (Ch. 20, NBC), Fort Myers, Florida. It provides programming, advertising and other services to a second station in the market, WZVN-TV (formerly WEVU-TV) (Ch. 26, ABC), Naples, Florida ("WZVN"), pursuant to an LMA with Montclair. The LMA has been in place since 1994.[20] The market is mid-sized (the 70th ranked DMA) with significant diversity, but lacks the magic numbers required to satisfy the current "8-voice-top-4" test.

When the LMA took effect in June 1994, WZVN had passed through the hands of three different owners in the previous two years. WZVN suffered from a disadvantageous tower location and height, the close proximity of a fellow ABC affiliate in the county immediately north of its DMA, and a plant and operations that were slipping well below industry standard. Its

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[20] Montclair has been the licensee of WZVN since 1996. In a separate proceeding, Waterman and Montclair are jointly seeking reconsideration of an FCC decision dismissing the joint application of Montclair and Waterman to transfer control of Montclair to Waterman and thus create a duopoly in the Fort Myers/Naples market. *See* Joint Petition for Clarification of the Record and Reconsideration, BTCCT-20011121AAY (Sept. 9, 2002) ("Joint Petition").

books showed positive cash flow but sustained and mounting operating losses. Cash flows were insufficient to sustain the station's debt, interest and capital improvement needs and existed because the previous owners, among other things, deferred investment in necessary facilities, equipment and operational enhancements. The station's service to the public reflected this poor financial condition. Its 1994 owner considered ending the station's local news service but ultimately concluded that WZVN could not survive as a stand-alone operation and therefore entered into the LMA with Waterman.[21]

The efficiencies brought about by the LMA and Waterman's commitment to the long-term viability of the station turned it around. They led to the complete modernization of WZVN's plant and equipment, including an investment of more than $2.6 million in equipment for the sole use of WZVN, plus more than $5 million in assets to be used by both WZVN and WBBH-TV. The efficiencies enabled WZVN to expand local programming. Thirty-three employees are now devoted to producing WZVN's news, which is independent of WBBH-TV's, and the station has greatly expanded local news (from 6 hours per week to approximately 19.5 hours) and children's and other public service programming.[22] Finally, without the efficiencies created by the LMA, WZVN would have been in danger of forfeiting its digital channel because

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[21] The facts summarized here and in the subsequent paragraphs are further detailed and supported in the Joint Petition.

[22] Since entering into the LMA, WZVN has become significantly involved in public service in the Naples community. For over five years, WZVN with more than 100 businesses and local schools has sponsored KidsFest an annual event where more than 30,000 families come to enjoy a day of fun and educational activities. For this event WZVN creates TVLand, complete with hands-on computer and Internet access, HDTV demonstrations and weather education. WZVN also produces public service announcements, buys newspaper advertisements and radio time, places promotional announcements and provides coverage of events such as an annual blood drive, the Salvation Army holiday toy drive, sneakers and clothes drive for kids, the March of Dimes, the Naples Art Festival, US Army Jazz band live concerts, and Naples' Fifth Avenue South community projects. In addition, WZVN hosts weather seminars for the public and schools and prints free educational guides on hurricanes and lightening.

it could not have generated the necessary funds to build out in a timely manner. Today, however, with the aid and commitment of Waterman, WZVN has been broadcasting in digital since October 31, 2002, from a more advantageous site shared with WBBH-TV.

The owners of Waterman and Montclair, concerned about the future stability of these accomplishments, seek to convert the LMA into joint ownership by Waterman. Unfortunately, the market is slightly too small to permit duopolies under the 8-voice-top-4 test, in spite of the fact that its seven independently-owned, full-power television stations provide robust competition for advertising and outlets for CBS, NBC, ABC, FOX, WB and PBS programming, as well as one independent station. A separately-owned Class A low-power station, WEVU-LP, Fort Myers, in combination with WBSP-LP, Naples, and an LMA agreement with Comcast Cable, provides the Fort Myers-Naples DMA with an outlet for the UPN network and enjoys full cable carriage throughout the market. Comcast itself offers diverse programming, including local programming, and enjoys local advertising revenues larger than two of the full-power television stations in the market combined. Other competitors include Time Warner which has cable systems serving portions of the DMA, DBS, and daily newspapers with large circulation published by major companies including Gannett, Scripps Howard, and the New York Times, as well as one published by the Sun Coast Media Group.[23]

Despite this diversity, the existing duopoly rule unfairly ignores the public interest benefits achieved through joint operation of WBBH-TV and WZVN. The size of the Fort

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[23] As explained above, the penetration levels of cable and alternative delivery systems (including DBS) in Fort Myers are 90.4%, which is significantly higher than other markets in Florida and nationwide. In addition there is strong competition for advertising revenue from the newspapers in the Fort Myers market. The revenue of the Gannett, Scripps Howard and Sun Coast Media papers in 2001 was $182,559,464 compared with the *combined* revenue of $66,782,000 for WBBH-TV, WINK-TV, WFTX-TV, WTVK-TV, and WZVN-TV.

Myers-Naples market prevents the Commission from taking into account, in considering the proposal for common ownership of the two stations, the benefits of a duopoly, including reviving a struggling station, providing more and distinct local programming, and enabling prompt DTV rollout. Nor does it make a difference under current rules that, for a market of its size, Fort Myers-Naples offers remarkable diversity of viewpoints and especially vigorous competition for advertisers and programming. Even if the Commission ultimately grants the waiver sought in this case, the Coalition Broadcasters submit that the duopoly rule should be changed so that situations in which the public interest benefits of joint ownership are so clear-cut and compelling will become easy cases for winning duopoly approval, not hard ones.

2. Raycom.

a. Honolulu, HI

Diversity, competition and service to the community have been significantly strengthened in the Honolulu, Hawaii market (the 72nd ranked DMA) as a result of the combined operations of KFVE (Ch. 5, WB) and KHNL (Ch. 8, NBC). Prior to April 16, 1993, when the licensee of KHNL (Ch. 8, NBC) entered into an LMA to provide programming, advertising and other services to KFVE (Ch. 5), KFVE did not provide any regular local news or sports coverage and provided little other local program service. KFVE's programming consisted primarily of about eight hours of movies a day, paid programming and some syndicated shows. Raycom estimates that more than half of the station's gross revenue came from paid programming and call-in solicitation lines.

Raycom took over the LMA when it acquired KHNL, and on December 31, 1999, it converted KFVE into a duopoly. Through joint operation, KFVE has become a significant local voice in the community. Under the LMA, KFVE was initially a UPN affiliate; it later acquired a secondary affiliation with the WB network, and since September 2002 has operated as a primary WB affiliate. The LMA and then joint ownership have allowed KFVE to present significant local programming. The station broadcasts live approximately 120 University of Hawaii sporting events annually;[24] and for a number of years it broadcast state high school championship games in a number of different sports. KFVE currently airs 60-second news briefs at 8 p.m. and 9 p.m. every weeknight and five minute newscasts at half time during prime time University of Hawaii games. For two years the station aired a 30-minute newscast at 9 p.m. It currently rebroadcasts KHNL's 10 p.m. newscast at 11:30 p.m., Monday through Saturday and at midnight on Sundays.[25]

Joint operation also has benefited the local community through twice-weekly sixty-second local editorials, numerous local specials and a variety of educational and informational children's programming.[26] For example, in addition to the extensive coverage of

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[24] To make sports programming more accessible to interested viewers, KFVE rebroadcasts about 90 of the 120 live sporting events. KFVE's University of Hawaii broadcasts include a mixture of men's and women's sports. These broadcasts include: men's baseball, women's softball, men's and women's volleyball, men's football, men's and women's basketball, women's soccer, and swimming. Both men's and women's sports have become some of KFVE's highest rated broadcasts. For instance, men's football has received a 17 rating/52 share; women's volley ball 16 rating/28 share; men's volleyball 11 rating/40 share; men's basketball 10 rating/15 share; women's basketball 9 rating/15 share; and men's baseball 7 rating/15 share.

[25] In late 1995, KHNL made the commitment to inaugurate local newscasts. Since 1996, KHNL's regular news programming typically includes newscasts from 5:30 to 7 a.m., Monday through Friday; 5-5:30 p.m. Sunday through Friday; 6-6:30 p.m. Monday through Saturday; and 10-10:30 p.m., Monday through Sunday. This major development has made valuable resources available to KFVE, including the ability to produce and air local news specials, the ability to air live cut-ins for emergencies and other breaking news, and Doppler Weather Radar.

[26] KFVE's transformation into a significant local outlet has been widely recognized. Senator Inouye has noted, for example, that the "LMA has made possible a significant increase in local programming, including an in-depth local news program at 9 p.m., extensive coverage of the University of Hawaii's sporting events, weekly programs on Hawaiian culture and local issues, and a doubling of children's programming." 142 Cong. Rec. S687-01 (daily ed. Feb. 1, 1996) (statement of Sen. Inouye) (the 9 p.m. newscasts aired in 1995 and 1996). Raycom's improvement on KFVE's programming has been reflected in its ability to maintain, and in some areas improve its market share while other broadcast stations in the market have declined. In fact, the only other station in the market to have maintained its market share from May 1992 to May 2002 is Raycom's other station, KHNL. Every other station has (footnote cont'd)

University of Hawaii events and nightly news re-telecasts, KFVE has broadcast 21 locally-produced evening specials in just the past two years.[27] These programs would not have aired if Raycom had only operated KHNL. Both KFVE and KHNL broadcast more than three hours per week of different core educational and informational programming for children, with KFVE adding to the market's weekday educational and informational programming for children.[28]

The duopoly also permits the stations the flexibility to repurpose network programming. For instance, when a bomb exploded during the 1996 Olympics in Atlanta, KHNL was broadcasting Olympic events on time delay. Rather than cut into the NBC broadcast when little was known about the incident, KHNL ran a crawl letting viewers know that they could catch live NBC coverage of the incident on KFVE. KFVE broadcast live coverage of NBC news while KHNL was able to continue showing the Olympic competition, thereby serving two sets of viewers.

Finally, the economies and efficiencies of jointly operating the stations, together with the enhanced performance of KFVE, are significantly assisting the conversion of KFVE's

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(footnote cont'd)
seen its audience share decline due to competition from cable and other sources. While KFVE has maintained its 7 a.m. to 1 a.m. market share, it has increased its prime time numbers by 50% over that ten year period from a 4 share to a 6 share. By improving programming and marketing, KFVE's gross income tripled in the first year it entered into the LMA with KHNL.

[27] Examples of such local programming include the Mayoral inauguration (1/18/01) and State of the City address (1/31/01), scholarship pageants (6/15/01, 6/7/02), a news special on surviving hurricanes (7/24/01), and the Office of Hawaiian Affairs Gubernatorial Forum (11/1/02). As a result of the Gubernatorial Forum broadcast on KFVE, the Office of Hawaiian Affairs has been negotiating with Raycom to air more events sponsored by the Office.

[28] KFVE broadcasts the *Moomins* series from 7:30 to 8 a.m. Monday through Friday.

operations from analog to digital. Raycom has joined with various other local broadcasters to develop a joint tower site to overcome the uniquely difficult siting issues in Hawaii.[29]

b. Cleveland, OH

Experience in the Cleveland, Ohio, market (the 17th ranked DMA), where Raycom co-owns UHF stations WOIO (Ch. 19, CBS), Shaker Heights, and WUAB (Ch. 43, UPN), Lorain, reflects how two financially viable but weaker stations can, through joint operations, together provide a stronger service to the public, enriching both diversity and competition.[30]

When the licensee of WUAB entered into an LMA with the licensee of WOIO on May 3, 1994, WUAB was an independent station broadcasting about one hour of news a day, and WOIO was a Fox affiliate without any local news. At that time, WUAB's limited news department of seven videographers and 25 other staff utilized one news truck, approximately seven cars, one ENG microwave and two receive sites. Building from that base, the licensee of WOIO greatly expanded the news resources to inaugurate local newscasts on WOIO, which became affiliated with CBS. WOIO now provides a significant news voice for the community, broadcasting seven and a half hours of news coverage every weekday. WUAB, now a UPN affiliate, broadcasts a one-hour newscast each day at 10 p.m., and supplements that coverage with news and weather breaks. Both stations are able to draw on significantly improved news gathering and production facilities. A combined news division of 19 videographers and 73 others employees now has access to four news trucks, sixteen cars, a helicopter, six ENG

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29 Raycom estimates that the capital costs of the conversion of KHNL (with its satellites) and KFVE will be nearly $5 million.

30 Raycom took over the LMA when it acquired WOIO in 1998 and acquired ownership of WUAB in March 2002.

microwaves and five receive sites. Raycom recently invested just under $1 million for a state-of-the-art Doppler Weather Radar system for the benefit of both stations -- an investment that would have been much less likely were it to be used for only one station.

Joint operation of WOIO and WUAB has led to an impressive amount of locally-produced programming and specials. In the past two years, for example, WUAB produced more than 150 local programs, including weekly 30-minute local public affairs shows. Many of the local specials, such as Harborfest (coverage of fourteen Tall Ships entering the Port of Cleveland, which was the largest assembly of such ships on the Great Lakes in 100 years), would not have been possible but for the duopoly because of the financial and technical commitments required.[31] WUAB adds to the diversity of educational and informational children's programming in the market by airing a 30-minute core program weekday mornings from 7 to 7:30 a.m. For a number of years, WUAB was able to secure the rights to broadcast Cleveland Indians baseball games. With the recent migration of those sports rights to a major cable MSO, WUAB plans to air even more local specials. For 2003, WUAB and WOIO have already negotiated to carry the Cleveland Fourth of July celebrations, local air show and the 2003 Harborfest.[32]

The licensee of WOIO has made major capital investments to upgrade the facilities of WUAB as well as WOIO. Over the past eight years, it has invested more than $10 million to upgrade the facilities of the two stations. In addition, for the initial construction of the

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[31] The flexibility provided by operating two stations also increases the stations' ability to carry and air local specials.

[32] The stations also have tentative plans to cover the St. Patrick's Day Parade, Cleveland Grand Prix, the Cleveland Air Show, and the Christmas Tree Lighting/Celebration on Public Square.

two stations' digital facilities (WOIO initiated digital operations in October 1999 and WUAB in April 2002), the licensee thus far has expended more than $3.5 million.

3. LIN.

In five markets, LIN owns and operates two stations, and in three markets LIN provides services under LMAs to economically disadvantaged stations.[33] Each of these arrangements has transformed a failing, unbuilt or otherwise underutilized station into a vigorous new source of programming and local service for the public.

a. From LMA To Duopoly.

(1) Grand Rapids-Kalamazoo-Battle Creek, MI

Since 1983, LIN has owned VHF station WOOD-TV (Ch. 8, NBC) in the Grand Rapids-Kalamazoo-Battle Creek, Michigan market (the 38th ranked DMA). In October 1991, LIN entered into an LMA with WOTV (Ch. 41, ABC) and in January 2002, it acquired WOTV.[34] In nearly two decades of operation prior to the LMA, WOTV sustained multi-million dollar losses. WOTV was unable to obtain high quality programming, particularly as a UHF station during the mid-1970s when there were only three television networks. Although WOTV

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33 LIN also has duopolies in two additional markets not discussed in detail below – Buffalo, New York (the 44th DMA) and San Juan, Puerto Rico. In the short time since LIN acquired WNLO (Ch. 23, I), Buffalo, New York, in 2002, the station has made significant strides to provide better service to its viewers. WNLO is the only station to provide a 10:00 pm newscast seven days a week. WNLO also recently announced that it would become an UPN affiliate beginning in January 2003. In addition, WNLO has aired important public service programming such as a gubernatorial debate, and has improved its transmission and production facilities and constructed a new tower. Since LIN acquired WJPX (Ch. 24 PAX) in August 2001, the programming has expanded to 24 hours a day and has improved substantially to include local sports such as basketball, baseball and golf. In addition, its regularly scheduled programs now include programs highlighting local small businesses and industries, local social and cultural activities, and news and interviews on personalities from the Dominican Republic. LIN has also upgraded the station's facilities by improving the transmitter site, adding state of the art master control facilities and installing digital facilities.

34 WOOD-TV was formerly licensed under the call sign WOTV, and WOTV was formerly licensed as WUHQ.

eventually became an ABC affiliate, its market potential was stunted by a VHF ABC affiliate licensed to the larger nearby community of Grand Rapids, whose coverage area substantially overlapped that of WOTV.[35] WOTV's financial situation eventually became so desperate that it had to discontinue local news service entirely. Today, however, with the commitment and contributions of staff and resources by LIN, WOTV has evolved into a station with an important local presence.[36]

WOOD-TV provided the expertise and equipment to grow significantly WOTV's news organization. Under the LMA, WOTV now broadcasts local news at 6:00 p.m. and 11:00 p.m. weekdays, targeted specifically at smaller communities in the DMA, such as Battle Creek and Kalamazoo, which are underserved by stations licensed to Grand Rapids. It also computerized its newsroom and obtained access to satellite news trucks and other essential ENG equipment. Since its acquisition by WOOD-TV, WOTV also has added 6:00 a.m. to 7:00 a.m. weekday newscasts, as well as 6:00 p.m. and 11:00 p.m. newscasts on Saturday and Sunday – for a total of thirteen hours of *local* news per week. It has created a community affairs newscast segment that informs the public of various events and fundraisers in the community that need volunteer participation. WOTV now has access to the largest Doppler Radar System in Michigan, enabling it to track storm systems and provide viewers with accurate, up-to-the-minute forecasts. Finally, WOTV, with WOOD-TV's assistance, provides a website that offers

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35 The overlapping ABC affiliate station, WZZM-TV in Grand Rapids (Ch. 13), was subject to certain tower restrictions and thus could not provide coverage to Kalamazoo or Battle Creek. This enabled WOTV to obtain the ABC affiliation in the first place but also provided the station with a permanent competitive handicap.

36 WOOD-TV shares a Community Affairs Director, a Promotions/Marketing Director, a Director of Engineering, a Programming Manager, an Operations Manager, a Web Manager and a Business Manager with WOTV, which create many back-office efficiencies for the station.

news stories and information concerning non-profit events in the community. As a result, WOTV has helped local non-profits raise over $1.6 million per year over the last four years.

In addition to bolstering its local news, WOTV now produces the only local college sports TV show in the area, *Wall to Wall Western*, a weekly program highlighting sporting events at Western Michigan University, which is located in Kalamazoo, the underserved portion of the market served by WOTV. WOTV also broadcasts another weekly sports show, *Wall to Wall*, a program produced by WOOD-TV highlighting high school sports. WOTV has expanded its children's educational programming through its collaboration with ABC in the production of *Children's First* programs, production of 30-minute local programming segments, and coordination with local schools to make ABC programming available to educators.

WOTV has produced and aired local specials on drug and alcohol abuse and domestic violence. With assistance from WOOD-TV, WOTV airs the Muscular Dystrophy Telethon and provides live broadcasts of local parades in Battle Creek and Kalamazoo. To complement this wide array of public service programming, WOTV partners with WOOD-TV on the Angel Tree campaign, which provides over 40,000 gifts each year to needy children. The stations have also partnered to distribute free smoke detectors to community residents, and WOTV has provided free NOAA Weather Radios to the community.

The two stations are programmed independently, and by adding new valuable advertising inventory, WOTV has made both the local and national spot markets substantially more competitive.[37] WOTV offers shows such as Martha Stewart and The View, which are not

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[37] One of the hypothetical overhead efficiencies of LMAs or duopolies, combined sales forces, has not proven out in LIN's experience, either at WOTV or at any of the other LIN LMAs. LIN has found that because of the significant differences in the value of the spots on WOOD-TV and WOTV, it is far (footnote cont'd)

available on any other station in the area. Finally, not only has WOTV's relationship with WOOD-TV enhanced the quality of its programming, but also it has enabled WOTV to upgrade its technical facilities. Specifically, WOTV has obtained a new transmitter and antenna, implemented stereo sound, and increased its power. This has improved the quality and reception of WOTV's signal, making it more attractive to viewers. WOTV also went on the air with digital in December 2002.

Although WOTV is finally profitable, it would not be profitable as a stand-alone station. But, under joint ownership with WOOD-TV, WOTV will remain a vital voice in the community.

(2) Hartford-New Haven, CT

LIN's experience in the Hartford-New Haven, Connecticut market (28th ranked DMA) illustrates how LMAs and co-ownership can transform otherwise fallow spectrum into a robust local outlet. LIN owns and operates VHF station WTNH-TV (Ch. 8, ABC), and in 1994 it began providing services under an LMA to the then-permittee of UHF station WCTX[38] (Ch. 59, I). In April 2002, LIN purchased WCTX pursuant to the "unbuilt station" duopoly waiver standard as the market did not satisfy the 8-voice test.[39]

WCTX received its construction permit in 1954 but incredibly did not construct its facilities until April 1995, nearly 41 years later and after it had entered into an LMA with WTNH-TV. This unprecedented delay, due in part to WCTX's inability to obtain access to a

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(footnote cont'd)
more efficient to maintain separate sales forces expert in selling the very different "products" offered by the two stations.

38 This station was formerly licensed as WCTX-TV and WTVU-TV.

39 *See* File No. BALCT-20010917AAD.

suitable transmission site, financially drained its owners. Only through its LMA with LIN was WCTX able to construct the station and reduce capital and operating expenses by utilizing WTNH-TV's tower and by combining certain overhead and administrative functions, such as traffic, billing and accounting systems.

For six years, LIN provided critical programming and advertising services to WCTX pursuant to the LMA. During this time, WCTX became an affiliate of the WB network. When WCTX lost that affiliation to a Tribune-owned station, its LMA enabled it to secure a UPN affiliation, increasing program choices for members of the public, opportunities for advertisers to reach their target audience and competition among broadcast stations in the Hartford-New Haven market.[40]

In April 2000, using the facilities and assistance of WTNH-TV personnel, WCTX launched a local newscast to serve the New Haven area, airing from 10:00 p.m. to 10:30 p.m. Monday through Saturday. WCTX also began offering a number of local interest programs, including locally-produced 30-minute public affairs series such as *The Highlight Zone* (weekly programs focusing on high school football), *Dialogue With Laurel Vlock* (an interview show addressing various issues affecting Connecticut airing six times a year), and *What's Goin On!* (a monthly program focusing on the African-American community and multicultural issues).[41] In the wake of September 11th, the station provided extensive news coverage of the tragedy and produced and aired local vignettes, *Community Voices*. WCTX also began airing a wide array of

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[40] For example, there is little or no duplication in programming between WTNH-TV and WCTX, and each station operates with a separate sales staff.

[41] In 1996, WCTX offered free airtime to federal congressional candidates in a series of eight 30-minute programs, an offer accepted by more than half of the 22 who were eligible. For several years, the station produced *Reflection of You*, a series of two-minute vignettes, aired daily, discussing different social policy issues.

sporting events of local interest, including New York Yankees, New York Mets and Boston Red Sox baseball games, and Quinnipiac University and Yale University men's hockey and basketball games. The station has broadcast telethons in support of adoption in conjunction with the Connecticut Department of Children & Families. WCTX also offers a wide variety of children's educational and informational programming. For example, six mornings a week WCTX offers *Disney's Recess*, a program that teaches children about important life lessons and on Sunday mornings airs programs about animals, wildlife and nature directed at children six to twelve years old.

Despite these efforts and accomplishments, and even after six years operating under the LMA, WCTX's financial condition continues to be precarious. The Hartford-New Haven market is robustly competitive. Many viewers are drawn to New York City stations, and residents throughout the DMA are drawn to popular cable networks due to the unusually high cable penetration rate (now 90%, the nation's second highest). Since entering into the LMA, WCTX's sign-on-to-sign off viewing shares have hovered around 2%,[42] substantially below the 4% benchmark used as one key indicia for determining whether a station is "failing" under the failing station duopoly waiver standard. The revenues generated by WCTX, even allocating a disproportionate share of the fixed costs to jointly operated WTNH-TV, produced a cumulative broadcast cash flow loss of nearly $5 million by 2001.[43]

[42] The station's share has not exceeded 2% for the July 2000, October 2000, November 2000, February 2001, May 2001 and July 2001 audience sweeps rating periods.

[43] If operated as a stand-alone station, WCTX's broadcast cash flow losses over the nearly six-year period would have totaled nearly $11 million, without a single profitable year, and the *pro forma* capital investment would have been nearly $28 million.

The further integration of WCTX and WTNH-TV achieved when LIN acquired WCTX in 2002, has created significant economies that have been essential to improving WCTX's service and increasing competition and diversity in the Hartford-New Haven market. WCTX has constructed multi-million dollar digital facilities, increased its power and obtained more favorable placement on local cable systems. Such advancements would not have been possible without joint ownership. In addition, WCTX will begin providing more programs that serve the Hispanic community, including a weekly Hispanic-oriented news recap program produced by another LIN station, WAPA in San Juan, Puerto Rico. Moreover, WCTX has expanded its weeknight 10:00 p.m. newscast, provided by WTNH-TV, to Sundays, and WCTX provides WTNH-TV's critical breaking news coverage to a new audience, since there is little viewer duplication between the two stations.[44]

(3) Norfolk-Portsmouth-Newport News, VA

The Norfolk-Portsmouth-Newport News, Virginia, market (the 41st ranked DMA) provides further evidence that in-market joint operation can significantly enhance the quality and breadth of local news and community-oriented programming. LIN, which has owned and operated VHF station WAVY (Ch. 10, NBC) since 1969 entered into an LMA with WVBT (Ch. 43, I) in 1994. In January 2002, LIN acquired WVBT. Prior to entering into the LMA, WVBT offered home shopping service with virtually no local programming. Due to its very low power level, WVBT's potential audience was limited to approximately 700,000 viewers, less than half

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44 Through shared resources with WTNH-TV, WCTX has provided hundreds of hours of community non-profit outreach, including relationships with the Juvenile Diabetes Association, Middlesex Hospital, American Heart Association, Ronald McDonald House and Aids Project Hartford for which is received a certificate of appreciation in 2001. In addition, WCTX participates in the St. Patrick's Day Parade (where it was the winner of the 2001 Grand Marshall Award), raises money and collects toys for children who are victims of domestic abuse, coordinates the Jump Rope for Your Heart program, and sponsors the Trail of Terror benefiting the American Heart Association.

the number of viewers in the market. The LMA helped convert this underutilized station into a strong local competitor as WVBT replaced its home shopping format first as a WB affiliate and then, in 1998, as a Fox affiliate.[45] WVBT also upgraded its facilities and increased its power, more than doubling its potential audience reach to 1,664,000 homes.[46]

As a result, WVBT has initiated a full slate of local newscasts and other innovative community-oriented programming. For instance, WAVY and WVBT collaborated to provide a high school football sports wrap-up show that aired for 30 minutes each Friday during football season.[47] After WVBT became a Fox affiliate, it commenced a local nightly newscast at 10:00 p.m., followed by a 15-minute daily local sports wrap. WVBT provided extensive coverage of Ground Zero and airs quarterly news specials called *Connecting With Kids*, which includes local packages focusing on children and family. In cooperation with PBS, WVBT participated in an Emmy Award winning special on Africa hosted by station anchor Kelly Wright. WVBT's provision of community and public service programming also includes *Families First*, a weekly half-hour, locally-produced series hosted by a WVBT anchor. Other WVBT programming includes the United Negro College Fund Telethon, quarterly specials featuring prominent African Americans, rebroadcasts of some of WAVY's children's programming and local college basketball and football games. WVBT has also launched an Internet website, including a community calendar. Prior to entering into its arrangement with LIN, WVBT employed 3 people. The station now has 37 employees and 3 part-time staff.

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45 WVBT duplicates no more than 3% of WAVY's programming on a weekly basis.

46 More specifically, the upgrades included a new transmitter, tower, automation equipment, master control, sales office and two new antennas – a primary and a standby.

47 Both stations aired the first five minutes of the program at 11:30 p.m. When WAVY turned from its 11:00 p.m. newscast to NBC late night programming at 11:35 p.m., WVBT broadcast the remainder of the program.

b. LIN Local Marketing Agreements.

(1) Austin, Texas

The Austin, Texas, market is now the 54th ranked DMA, but remains channel constrained. With six UHF stations and one VHF station, it cannot satisfy the Commission's current 8-voice test. In 1979, LIN acquired station KXAN (Ch. 36, NBC), and in 1994, it entered into an LMA with station KNVA (Ch. 54, today WB). When LIN entered into the LMA, KNVA had not been built, primarily due to lack of funding. The existence of only four television stations in the market at that time not only foreclosed opportunities for new television networks, but also limited overall diversity.

As a result of its involvement with KXAN, KNVA became operational in 1994, with a first-class physical facility. KNVA became an outlet for the fledgling WB network and provided numerous programs that otherwise would have been available only on cable, including San Antonio Spurs basketball games and Round Rock Express (minor league) baseball games. Initially, KNVA offered traditional syndicated shows and other fare. But with the growing success of programming targeted at young viewers (Austin is the nation's youngest DMA), KNVA's program strategy and on-air look moved beyond the traditional to target the young, underserved Austin audience. LIN's resources have allowed KNVA to provide new syndicated and original programming. Newscasts have been replaced by short information breaks called *The Buzz*. KNVA has won awards for its public service campaigns targeting low voter turnout by young adults, including a WB network "Froggy" for affiliate excellence. Projects like "One For The Community" have raised over $1,000,000 for Austin area schools and non-profits over the past five years, and the WB Kids Club has partnered with organizations such as the Austin Children's Museum and the Austin Zoo to offer discounted admission to young viewers and their families.

The station has invested over $1.7 million to build state-of-the art digital facilities and has launched digital service pursuant to special temporary authority. The LMA has also enhanced competition by increasing the number of advertising spots in the market by approximately 45% during prime time and 25% overall. LIN, which has an option to acquire KNVA, would like to convert this station into a duopoly. But because the market has only seven full-power stations, it cannot meet the 8-voice test despite.

(2) Providence, RI-New Bedford, MA

The Providence, RI-New Bedford, MA market (the 48th ranked DMA) demonstrates that LMAs provide critical resources to financially disadvantaged stations that would not be viable on a stand-alone basis. LIN owns and operates WPRI-TV (Ch. 12, CBS) in Providence, which has an LMA with WNAC-TV (Ch. 64, FOX). While the Providence market has seven full-power stations and therefore just falls short the 8-voice standard, the DMA is intensely competitive, with NBC, CBS, ABC, Fox, WB/UPN, PAX and one educational station.

The WNAC-TV/WPRI-TV LMA was originally formed in June 1996. After LIN assumed the LMA in May 2002, the benefits of its leadership were immediate. In August 2002, WNAC-TV relaunched its nightly 45-minute 10:00 p.m. newscast, followed by a 15-minute sports wrap that includes local high school and college sports coverage. WNAC-TV has also added nightly 6:00 p.m. and 6:30 p.m. local newscasts. WNAC-TV news programs complement WPRI-TV's weekend schedule, which benefits the local audience because WPRI-TV often must preempt its own news programming for live CBS sports programming.

With LIN's assistance, WNAC-TV has recommitted itself to public affairs programming. For example, in November, WNAC-TV simulcast extended election coverage. In July, it broadcast the nation's oldest Independence Day parade. WNAC-TV airs a local 30-minute *Newsmakers* program on Sunday mornings, and it provides over three hours of educational and informational children's programming weekly. WNAC-TV also has reinitiated community outreach programs and will become involved with Rhode Island Blood Center blood drives, the MS Walk, Rebuilding Together with Christmas in April, the Special Olympics, the Aquidneck Island Police Parade, the AIDS walk, breast cancer and leukemia walks, and the Marine Corps Toys for Tots Drive.

* * *

For the reasons developed above, the Coalition Broadcasters urge the Commission to liberalize its local TV station ownership rule, adopt more reasonable standards for the "failing station" exception, and acknowledge that other considerations may also justify waiver of the new rule.

Respectfully submitted,

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January 2, 2003

ATTACHMENT A

TELEVISION LOCAL MAREKTING AGREEMENTS AND LOCAL DUOPOLIES: DO THEY GENERATE NEW COMPETITION AND DIVERSITY?

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BIA Financial Network

January 2, 2003

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Executive Summary

Many stations in small- and medium-sized local markets have been unable to attract sufficient audience share and advertising revenue to be financially viable. As a result, many over-the-air television stations have entered into local marketing agreements ("LMAs") with, or have been purchased outright by another local television station in order to improve their performances. The purpose of this paper is to evaluate the history of stations that have recently entered into LMAs and/or duopolies to determine their success.

Specifically, we will evaluate the performance of LMAs or co-ownership operations involving LIN Television and Raycom Media, and other local television stations in seven markets. In all of these cases, we will determine whether these arrangements have led to increased ratings and revenue performance for previously underperforming stations.

Some of the results of that analysis include:

- In all seven cases, the advent of the new relationship has led to significant increases in both audience share and advertising revenue.
- On average, the seven stations increased their Local Commercial Share by 3.2 points after entering into an LMA or duopoly from the average for the two years prior to that change.
- There was a 250.7% increase in revenue, on average, for the seven stations from the year immediately before the LMA to the value for 2001.
- All seven stations outperformed similarly situated stations affiliated with the same networks in similar-sized markets during this time (cohort stations).
- For two of the seven stations, the joint operation improved the station's already existing revenue advantage over otherwise similarly situated cohort stations.
- In one instance, the station was not on air prior to the LMA. Yet, in just eight years since that station went on the air, the station's revenue is 101.2% higher than similarly situated stations.
- For four stations, joint operation has led to a significant reduction in these stations' revenue disadvantages as compared to their cohort stations.

With the improved health made possible by LMA or duopoly arrangements these stations are now providing another strong voice to their local communities. Moreover, as these stations become more financially sound, they are better equipped to make the necessary innovations to their facilities and improvements in their programming to better serve their communities in the future.

TELEVISION LOCAL MARKET AGREEMENTS AND LOCAL DUOPOLIES: DO THEY GENERATE NEW COMPETITION AND DIVERSITY?

Introduction

Many stations in small and medium-sized local markets have been unable to attract sufficient audience share and advertising revenue to be financially viable. As a result, many over-the-air television stations have entered into local marketing agreements ("LMAs") with, or have been purchased outright by another local television station. The potential synergies of obtaining programming, advertising and other services from or becoming co-owned with another local television station have made these arrangements sensible business deals, and in many cases, have made it possible for those struggling stations to survive. These joint operations can realize substantial cost savings in many different areas, generate substantial increases in revenue, and finally, provide the stability necessary to make needed investments in the struggling station.

The purpose of this paper is to evaluate the history of stations that have entered into LMAs and/or duopolies to determine their success. We will evaluate the performance of LMA or co-ownership operations involving LIN Television ("LIN") and Raycom Media ("Raycom") and other local television stations in seven markets.[1] In all of these cases, we will determine whether these arrangements have led to increased ratings and revenue performance for the station. In order to evaluate those performances fairly, we will compare that group of stations with stations that have the same affiliation in markets of similar size. In this way, we can assess whether the

[1] An analysis of the LMA operation of Waterman Broadcasting in the Ft. Myers-Naples, FL television market was not included because there are an insufficient number of similarly situated stations to make a meaningful comparison.

stations in question became stronger in revenue and audience share and therefore more able to benefit the local community with improved diversity of voices/programming and local advertisers with increased opportunities in the local television market.

Markets and Stations to Be Evaluated

As mentioned above, we will examine the markets in which LIN and Raycom have entered into LMAs and/or duopolies with other local stations. It is important in this analysis to accurately identify when joint operation began. Those dates determine the starting point for evaluating the potential improvement.

Table 1 lists the stations that will be evaluated, including their market ranks, call signs, markets, channels, affiliations, the start dates of the LMA or duopoly and whether the stations were later purchased,[2] and the station group owners.

[2] In many of these cases, local stations owned by these companies have subsequently formed a local duopoly.

Table 1 – List of Stations In LMA or Duopoly Arrangements

Market Rank[3]	Call Sign	Market/Channel	Affiliation	Start Date for LMA	Station Group
17	WUAB	Cleveland, OH (43)	UPN	1994 (1998 duopoly)	Raycom
28	WCTX	Hartford-New Haven, CT (59)	UPN	1995[4] (2002 duopoly)	LIN
38	WOTV	Grand Rapids, MI (41)	ABC	1991 (2002 duopoly)	LIN
42	WVBT	Norfolk-Portsmouth, VA (43)	Fox[5]	1994 (2002 duopoly)	LIN
49	WNAC	Providence, RI-New Bedford, MA (64)	Fox	1996	LIN
54	KNVA	Austin, TX (54)	WB	1994[6]	LIN
72	KFVE	Honolulu, HI (5)	WB	1993 (2000 duopoly)	Raycom

Ratings and Revenue Performance

In order to determine the impact of joint operation, we examined both the audience share and total revenue each station was garnering immediately prior to entering into the LMA/duopoly up to the present. The measure of audience share is based on the station's Local Commercial Share ("LCS") for each year. The LCS is the average total day viewing share (9AM-Midnight)

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[3] The market rank is the rank for the current, 2002-2003 television season, not the rank at the time at which the LMA was entered.

[4] LIN actually entered into an LMA with WCTX's license owner in 1994, though the station was not in fact built at that time. Only with funding from LIN was that station built in 1995, which is the relevant "start date" to assess the ratings and revenue impact.

[5] WVBT became a Fox affiliate in August 1998. Previously the station was affiliated with the WB network. We will evaluate this station's performance starting with its change to a WB affiliation.

[6] LIN entered into an LMA with KNVA in mid-1994, though the station did not become operational until August 1994.

for the prior twelve months (four ratings periods) adjusted for viewing lost to out-of-market stations, cable channels, and non-commercial stations. In other words, it represents the station's relative performance against all other local commercial stations.[7]

To evaluate the impact of all these management changes, we have compared the audience share of these stations immediately prior to the change in management with the average since that time. Specifically, we calculated the average LCS's of these stations for the two years[8] prior to and the years since the management change. Figure 1 shows that comparison for all of the stations. All of the stations experienced increases in their audience share.

In all seven cases, the advent of the new relationship led to significant increases in both audience share and advertising revenue.[9] On average, the seven stations increased their LCS by 3.2 points after entering into an LMA from the average for the two years prior to that change.

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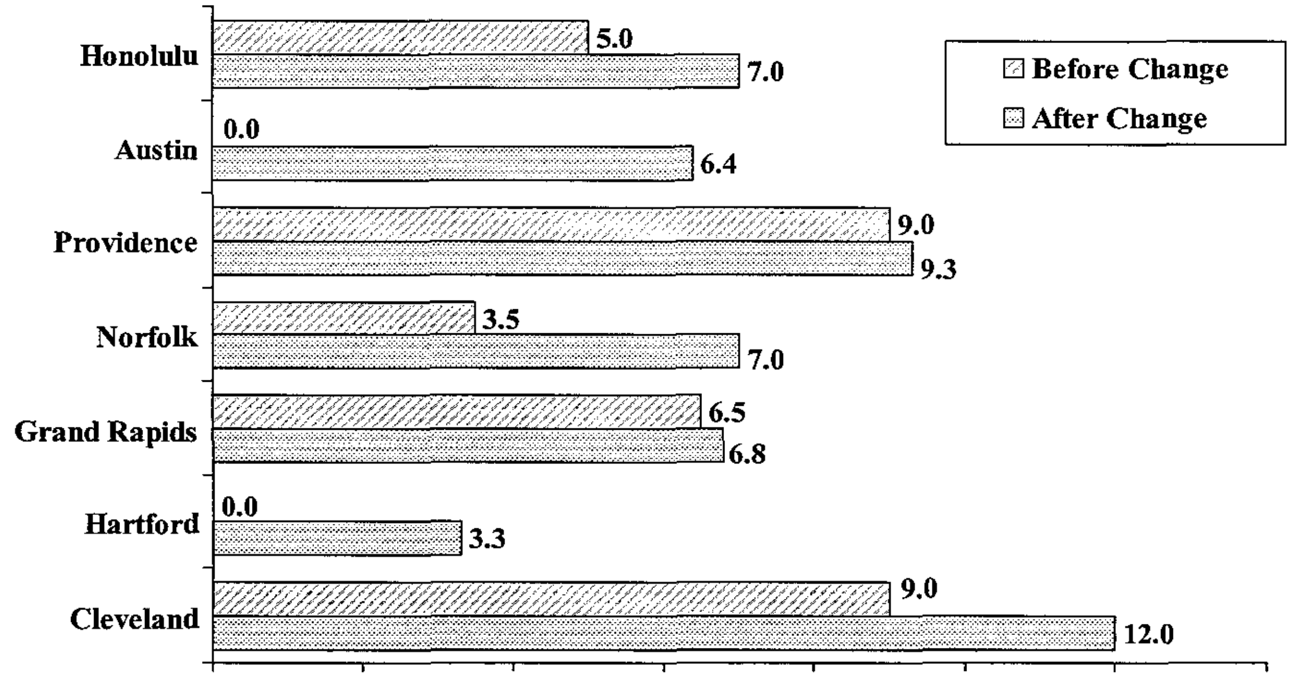
[7] These stations do not only compete against other commercial stations, but also local public stations and the increasing number of cable networks. An indication of that greater competition from many more sources is seen in the total audience share for all of the local commercial stations in these seven markets. Where in May of 1993, 76.6% of the total day audience was viewing local commercial stations in these seven markets, on average, by May of 2002 that percentage had dropped to 53.3%.

[8] Unfortunately, since the Honolulu, HI market was not surveyed by Nielsen Media Research until 1993, we can only use one year for the prior management change value.

[9] In some markets the revenue and share numbers decreased or remained the same for 2001. The numbers for 2001 reflect the overall recession in the media market and do not indicate a decline in the performance of a station. In addition, it should be noted that the performance of all of the stations evaluated in this study was above or consistent with the other network-affiliated stations (ABC, CBS, NBC and FOX) in their respective markets.

Figure 1
LCS Comparison with Cohort Stations



As for revenue,[10] there was a 250.7% increase in revenue, on average, from the year immediately before the LMA to the value for 2001. To see these improvements graphically, we have plotted the yearly values for each station's LCS along with the revenue for that station. The Appendix includes the graphs for all seven stations in our analysis.

A brief review of each of the stations' audience share and revenue histories highlights the improvements gained from joint operations.

- *WUAB-Cleveland.* Raycom entered into an LMA with WUAB in 1994 and acquired the station in 1998. In the immediate two years prior to combining those local operations, WUAB had a LCS of 9. Over the subsequent seven years with Raycom operating that station, the average LCS was 12. With that greater share the station has been more competitive in the local advertising market, increasing its annual revenue by 196.0% during that time.
- *WCTX-Hartford-New Haven.* As mentioned earlier, LIN started operating WCTX in 1995, helping that station initiate service. Over the next six years, WCTX has garnered an average 3.3 LCS, with the most recent (2001) LCS reaching a 5 share. As a result, this "new" competitor in the local television-advertising marketplace was able to generate over $5 million in revenue in 2001.
- *WOTV-Grand Rapids.* LIN began operating this station in 1991, and purchased the station in 2002. It has increased the station's ability to attract a greater share of the audience watching local commercial television stations, generating a LCS of 9 in the

[10] The revenue data for the LIN and Raycom stations are from the BIA Media Access Pro™ database. BIA Financial Network makes revenue estimates annually for all television stations.

most recent year (2001). With the added audience, this station has increased its revenue 250.0% since 1993.[11]

- *WVBT-Norfolk-Portsmouth.* LIN started operating this station in 1994 and purchased the station in 2002. Prior to that the LMA, the station was a low power shopping network affiliate. With LIN's help, the station increased its power and began offering WB network programming, changing to the FOX network in 1998. As a result of these improvements, in 2001 the station had a LCS of 9 and generated over $6.5 million in advertising revenue.
- *WNAC-Providence, RI-New Bedford, MA.* Since LIN began operating this station in 1996, WNAC has increased both its LCS and revenue. WNAC's revenue has increased by 147.7%.
- *KNVA-Austin.* Since KNVA became operational in August 1994, it has seen a dramatic rise in both audience share and advertising revenue. KNVA now attracts 10% of the audience watching local commercial stations in the Austin, TX market. With that share, it generated nearly $11 million in advertising revenue.
- *KFVE-Honolulu.* Raycom began operating this station in 1993 and purchased it in 2000. Since operating that station, Raycom has been able to increase the station's LCS by two points, which it has maintained for the last five years. With that greater audience, the station has been able to generate 272.8% greater revenue than for the immediate year prior to the joint operations.

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[11] BIA*fn* first began estimating individual station revenues for 1993. As a result, we do not have revenue estimates for this station prior to it being operated by LIN Television.

The data discussed above unambiguously demonstrate that the relationship between these stations and LIN and Raycom, respectively, have led to improved performance in both share of audience attracted and revenue generated. The increase in revenue of these stations is directly correlated with the increase in audience share, which is evidence of greater public acceptance and demonstrates that these stations are providing better service to the public.

Comparison of Audience and Revenue Performance to Cohort Stations

It is also important to evaluate how other similarly situated stations, or "cohort stations," performed over this same period of time. If the seven stations in this study outperformed the cohort stations affiliated with the same networks in similar-sized markets, then the case is much stronger that an association with another local station had a positive impact on the ability of these stations to better serve their local communities.

In order to compare these seven stations to otherwise similarly situated cohort stations, we selected stations with the same network affiliation in markets five ranks below and five ranks above the analyzed station.[12] Because all seven stations are UHF stations, we only selected stations for comparison that were also UHF stations.

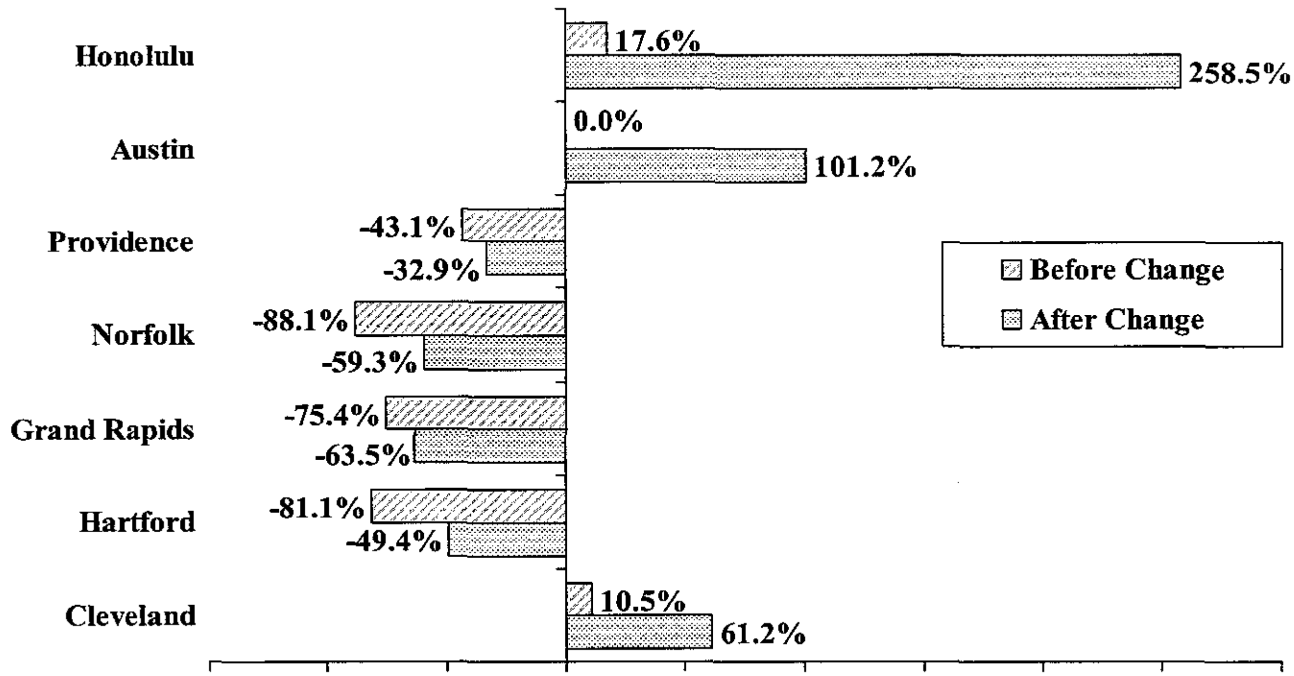
In order to evaluate how well the seven stations performed relative to the cohort stations, we compared each of the seven stations' revenue with the respective average revenue for the cohort group of stations prior to the LMA and then again for 2001. If the association with

12 These comparisons may actually understate the benefits of joint operation because some of the cohort stations are jointly operated. For the WUAB, Cleveland, OH comparison, there were five joint operations included in the cohort group; for WCTX, Hartford-New Haven, CT, four; for WOTV, Grand Rapids, one; for WVBT, Norfolk-Portsmouth, two; for WVBT, Norfolk-Portsmouth, two; for WNAC, Providence, RI-New Bedford, MA, two; for KNVA, Austin, TX, two; and for KFVE, Honolulu, HI, one.

another local station improves the station's revenue, then those ratios should increase after the LMA began. Figure 2, next page, reveals that for all seven stations, the joint operation improved the revenue performance of the station as compared to similarly situated stations.

For two of the seven stations, the joint operation improved the station's already existing revenue advantage over the cohort stations. For example, the Honolulu station's (KFVE) revenue was 17.6% higher than the average for the similarly situated stations prior to entering into the LMA. By 2001, that station's revenue was 258.5% higher than the average revenue for the same groups of stations. Another improved revenue advantage occurs with WUAB, Cleveland. Prior to entering into the LMA, that station enjoyed a 10.5% revenue advantage over similarly situated stations. By 2001, that advantage increased to 61.2% over these stations. Finally, KNVA in Austin, which was not on the air prior to the LMA, now has revenue that is 101.2% higher than similarly situated stations.

Figure 2
Revenue Comparison with Cohort Stations



For the remaining four stations, the joint operations have led to significant reductions in those stations' revenue disadvantages (i.e., the negative percentage became lower). For example, the revenue for WNAC, Providence, RI-New Bedford, MA, was 42.1% below the average revenue of its cohort group prior to entering the LMA. By 2001, that disadvantage was reduced to only 32.1% below the average revenue of the cohort group.

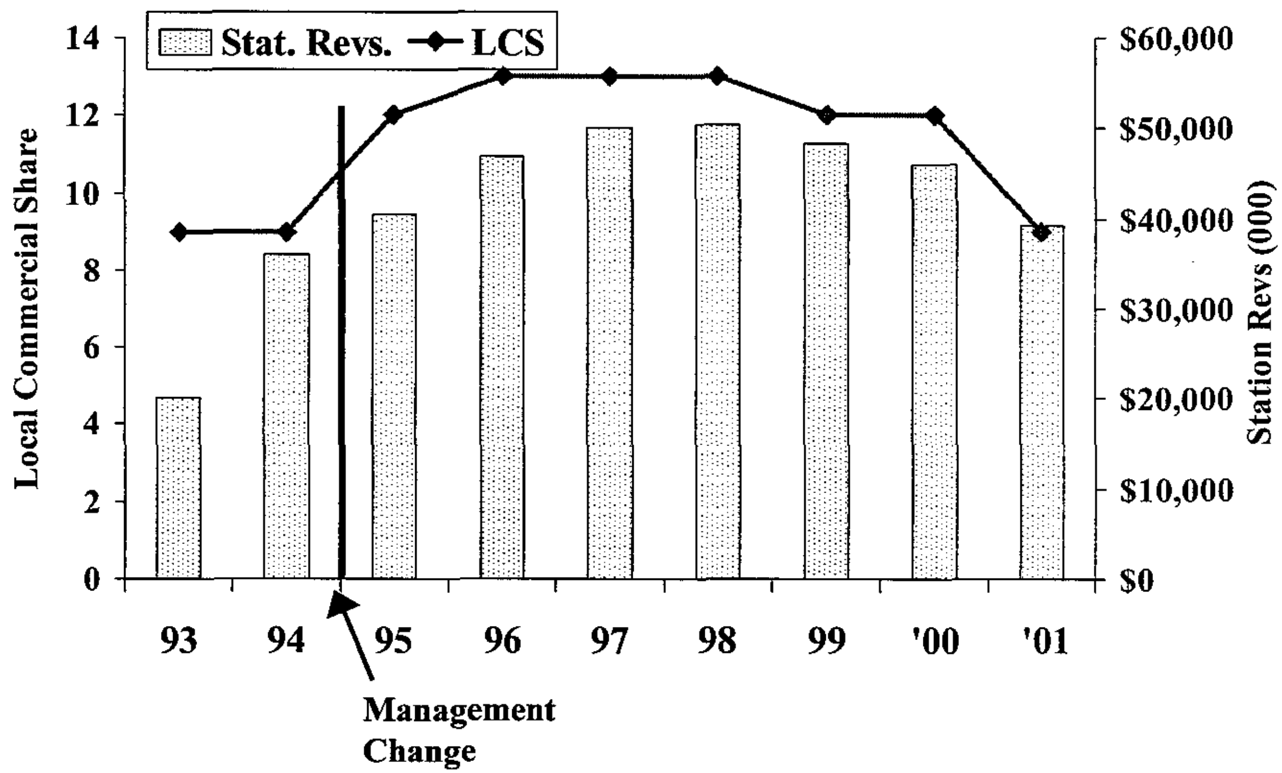
Conclusion

In order to respond to the myriad challenges facing local broadcasters in small- and medium-sized markets, many struggling television stations have combined with other local television stations, either through local marketing agreements or duopoly ownership arrangements. We have evaluated seven such combinations in this report to see whether those combinations were successful in bolstering the audience share as well as the financial fortunes of the previously struggling television stations. The unambiguous answer to that inquiry is a strong yes. By operating jointly with other local television stations, these seven stations have strengthened their appeal to their local communities and improved their financial positions.

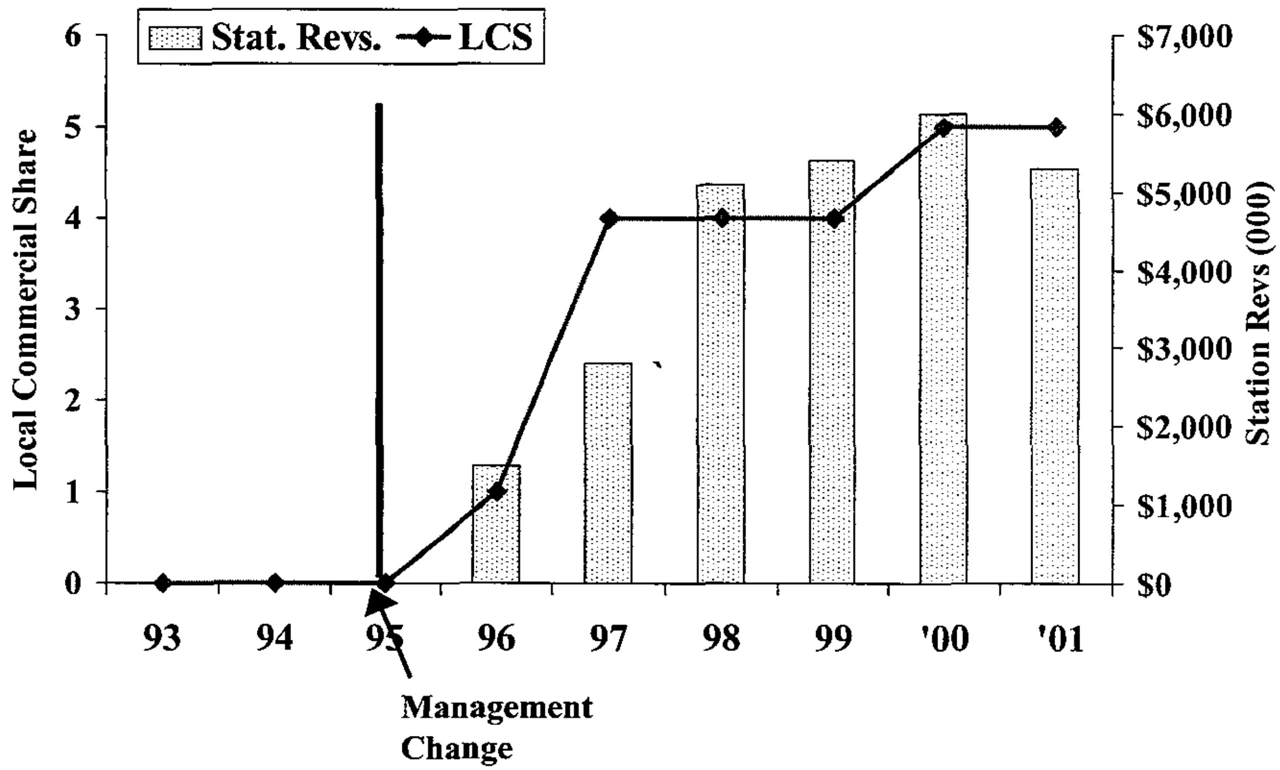
With this improved appeal these stations are now providing another strong voice to their local communities. Moreover, as these stations become more financially sound, they are better equipped to make the necessary innovations to their facilities and improvements in their programming to better serve their communities in the future.

Appendix – Individual Station Performances

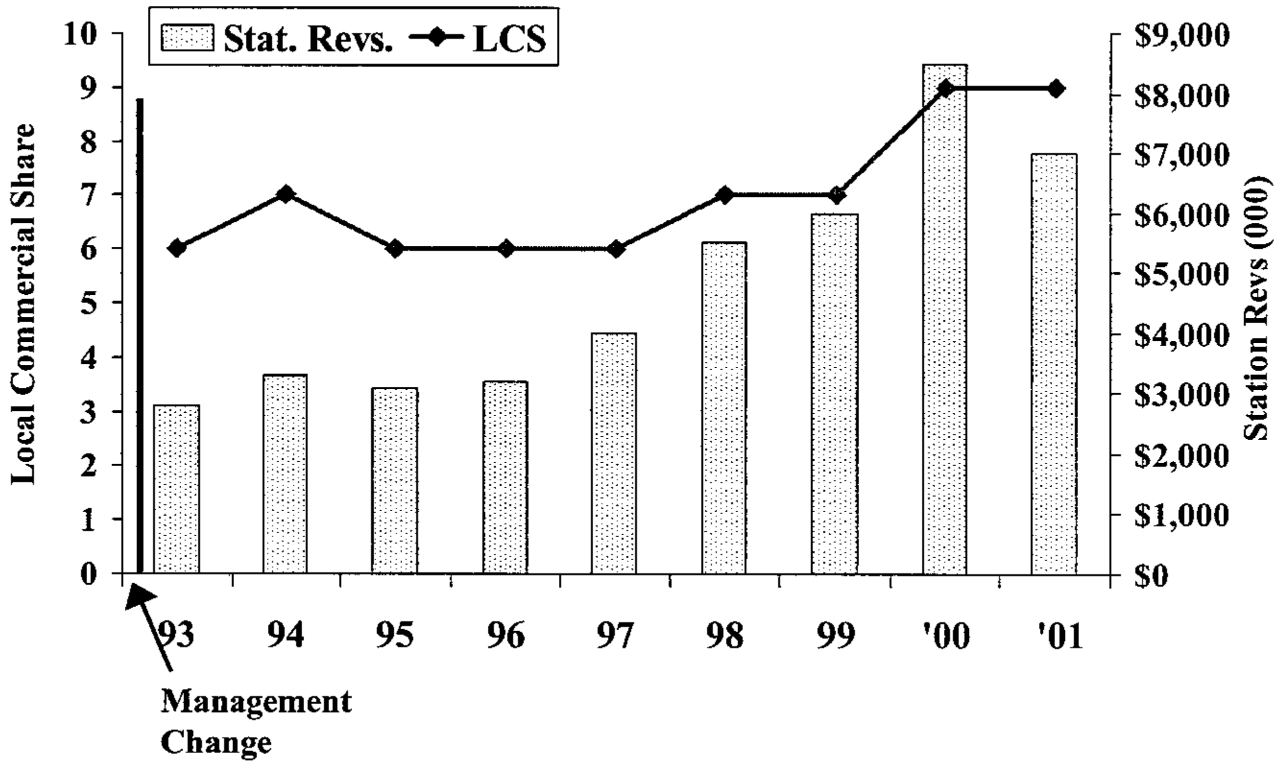
WUAB – Cleveland, OH
Local Commercial Share and Adv. Revs.



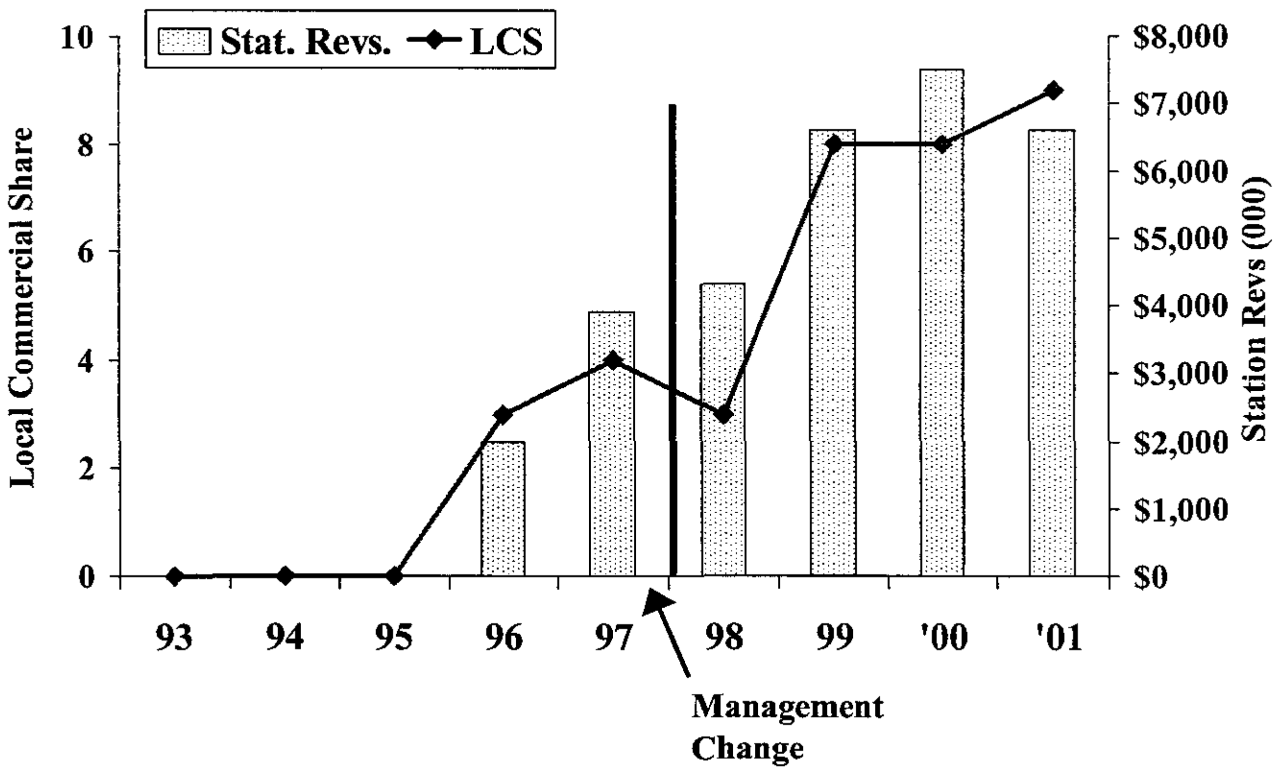
WCTX – Hartford-New Haven, CT
Local Commercial Share and Adv. Revs.



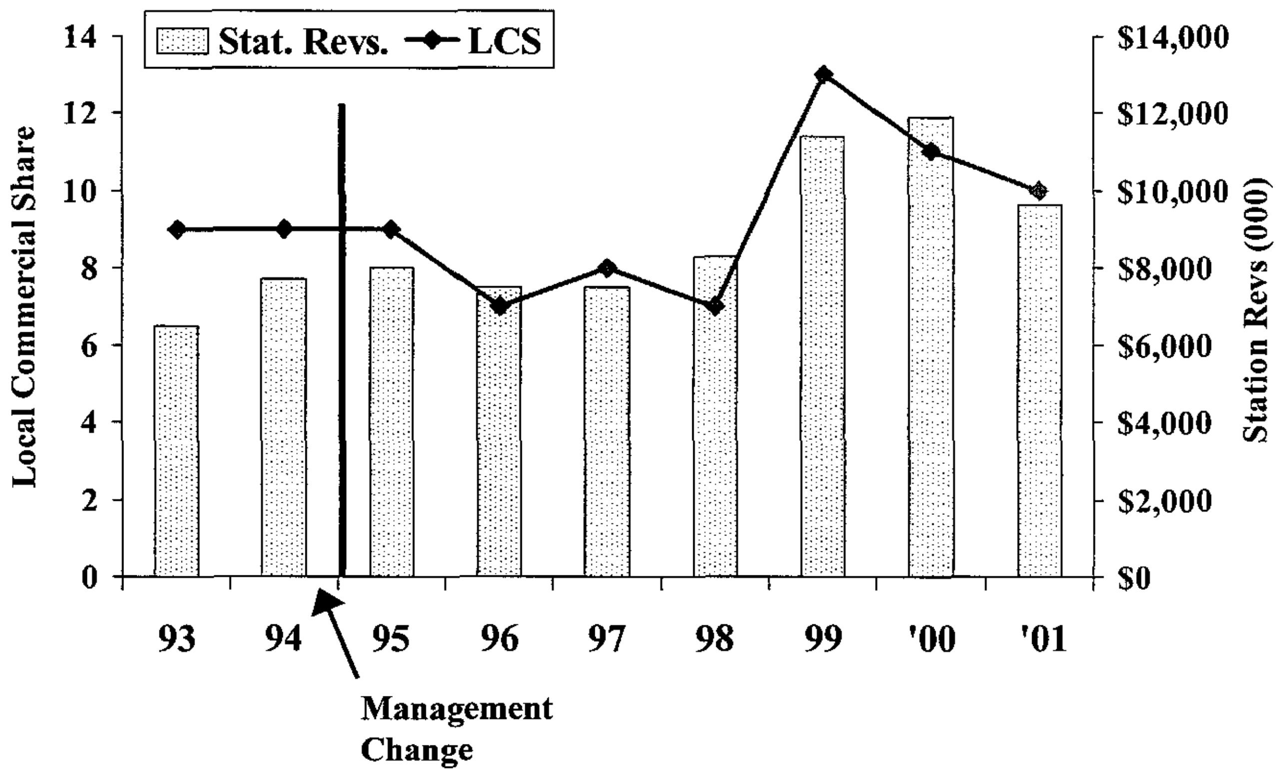
WOTV – Grand Rapids, MI
Local Commercial Share and Adv. Revs.



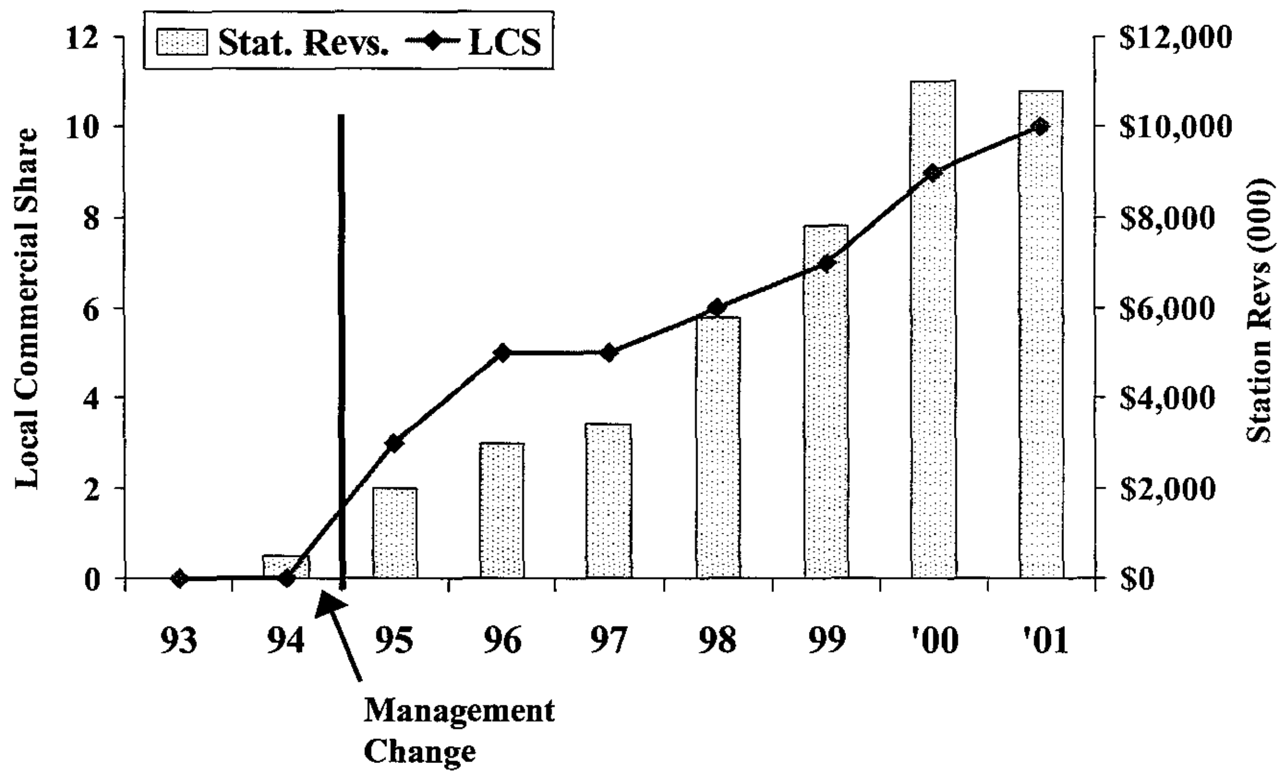
WVBT – Norfolk-Portsmouth, VA
Local Commercial Share and Adv. Revs.



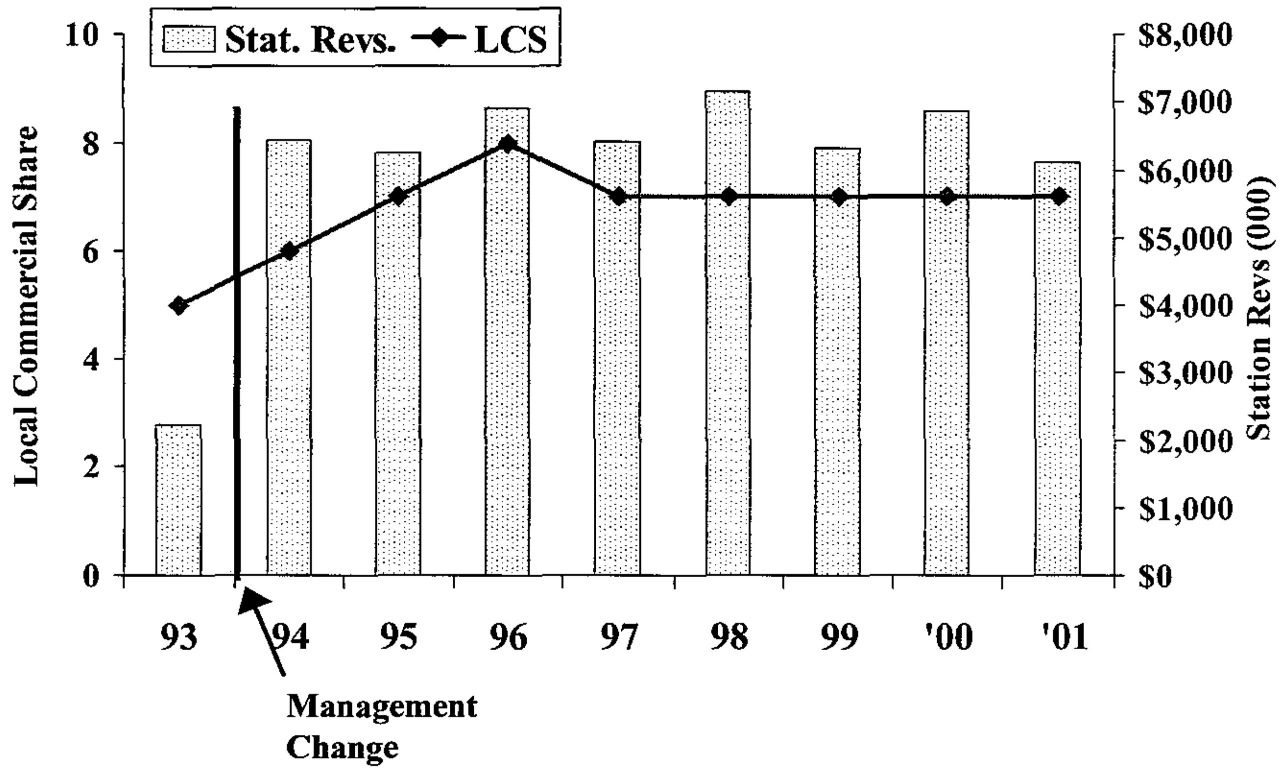
WNVA – Providence, RI-New Bedford, MA Local Commercial Share and Adv. Revs.



KNVA – Austin, TX
Local Commercial Share and Adv. Revs.



KFVE – Honolulu, HI
Local Commercial Share and Adv. Revs.



ATTACHMENT B

STUDY OF DTV ROLLOUT BY SMALLER STATIONS IN MARKETS 51-100

One advantage of joint operation is that it facilitates innovation and the deployment of new technologies, particularly in small- and mid-sized markets, where stations may lack financial resources. To illustrate this point, the Coalition Broadcasters examined the rollout of digital services in markets 51 to 100 to determine whether smaller stations operating in a duopoly or LMA arrangement have rolled out digital facilities earlier than otherwise similarly-situated stations that are not in a joint operating arrangement. The study looked at UPN and WB affiliates in these markets as representative of smaller stations.[48]

The results of the study are striking. Not only are smaller stations operating in a duopoly or LMA arrangement in small and medium-sized markets more likely to be on the air in digital, but also they are far less likely to have taken no steps (such as filing an initial DTV application) toward transitioning. In particular:

- Only 30% of stations in non-duopoly, non-LMA situations are broadcasting in digital, compared with 55.6% of stations that are part of LMAs or duopolies.
- Of the 40 stations in non-duopoly, non-LMA situations, 7 have not even begun to transition to digital (i.e., they have not filed an initial application (or

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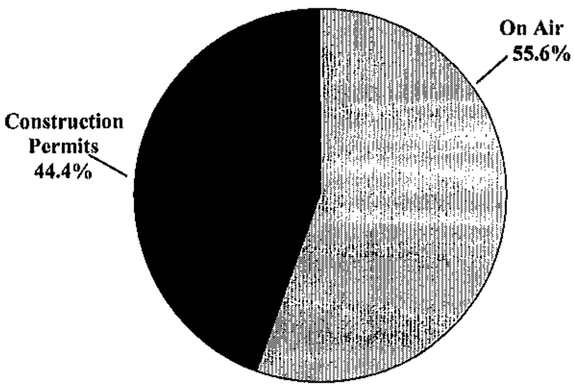
[48] Data for the study was obtained from the 2002 *Cable and Television Factbook*, published by Warren Communications, and a review of the FCC's database. WB and UPN affiliates were chosen because they tend to be smaller stations and also because they are frequently targets of larger in-market stations interested in entering into a joint operating situation. KBEJ, Fredericksburg, TX, which operates pursuant to an LMA, is not included in this study. Due to the late date on which it was granted its analog construction permit (application filed 1986, granted 1998), KBEJ was not awarded a DTV allotment. Its request for a DTV allotment is pending before the FCC.

have had their applications dismissed)), while all 9 stations in LMAs or duopolies have at least begun the transition.

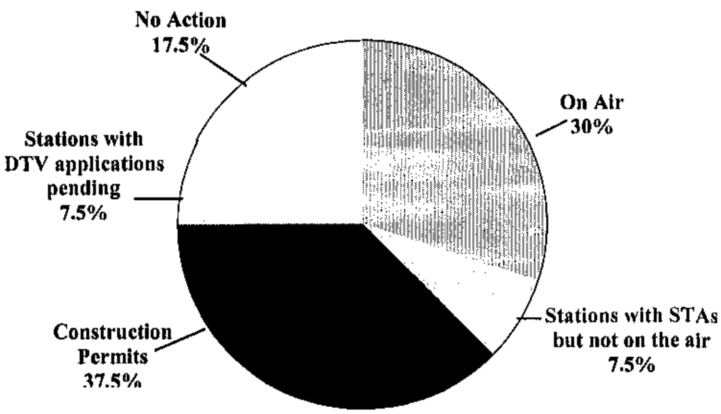
- 7.5% of non-duopoly, non-LMA stations still have initial DTV applications pending, while none of the stations in LMAs or duopolies has a pending DTV application.
- 37.5% of non-duopoly, non-LMA stations have construction permit extension requests pending or have had a construction permit extension request granted, compared with 44.4% of stations in LMAs or duopolies.
- Every joint operating stations has at least filed for a DTV construction permit, compared to 75% of other stations.

Figure 1 shows the breakdown of stations operating pursuant to LMAs or duopolies versus non-duopoly stations based on stage of the DTV transition each has attained. It demonstrates that joint operating stations have outpaced non-duopoly/LMA stations in virtually every category and are far more likely to be on the air in digital.

Figure 1



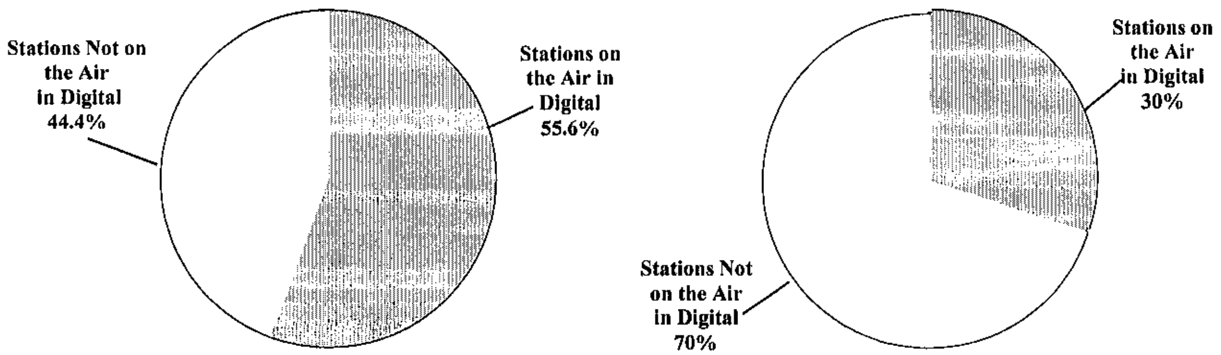
Stations in Duopolies/LMAs



Stations Not in Duopolies/LMAs

As illustrated in Figure 2, which depicts the percentage of stations operating under LMAs or duopolies that are currently broadcasting in digital as compared to the percentage of non-duopoly stations that have launched digital operations, fully half of all joint operating stations are broadcasting a digital signal as compared to just 30% of non-duopoly/LMA stations.

Figure 2



Stations in Duopolies/LMAs **Stations Not in Duopolies/LMAs**

Thus, this study illustrates that one advantage of duopolies and joint operating arrangements is that it helps smaller stations in small- and medium-sized markets to deploy innovative services such as digital technology more quickly.